THE FUTURE OF BANKING: HOW CONSOLIDATION, NONBANK COMPETITION, AND TECHNOLOGY ARE RESHAPING THE BANKING SYSTEM

HYBRID HEARING

BEFORE THE

SUBCOMMITTEE ON CONSUMER PROTECTION
AND FINANCIAL INSTITUTIONS

OF THE

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THE FUTURE OF BANKING: HOW CONSOLIDATION, NONBANK COMPETITION, AND TECHNOLOGY ARE RESHAPING THE BANKING SYSTEM

Wednesday, September 29, 2021

U.S. HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CONSUMER PROTECTION
AND FINANCIAL INSTITUTIONS,
COMMITTEE ON FINANCIAL SERVICES,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10:02 a.m., in room 2128, Rayburn House Office Building, Hon. Ed Perlmutter [chairman of the subcommittee] presiding.

Members present: Representatives Perlmutter, Meeks, Scott, Velazquez, Sherman, Green, Foster, Vargas, Lawson, Casten, Pressley; Luetkemeyer, Posey, Barr, Williams of Texas, Loudermilk, Budd, Kustoff, Rose, and Timmons.

Ex officio present: Representative Waters.

Also present: Representatives Garcia of Illinois and Emmer.

Chairman PERLMUTTER. The Subcommittee on Consumer Protection and Financial Institutions will come to order.

Without objection, the Chair is authorized to declare a recess of the subcommittee at any time. Also, without objection, members of the full Financial Services Committee who are not members of this subcommittee are authorized to participate in today's hearing.

With the hybrid format of this hearing, we have some Members and witnesses participating in-person and others on the Webex platform.

I would like to remind all Members participating remotely to keep themselves muted when they are not being recognized by the Chair. The staff has been instructed not to mute Members, except when a Member is not being recognized by the Chair, and there is inadvertent background noise.

Members are also reminded that that they may only participate in one remote proceeding at a time. And I am aware that there are several hearings going on even as we speak, but you can only participate in one at a time. If you are participating remotely today, please keep your camera on. And if you choose to attend a different remote proceeding, please turn your camera off.

Today's hearing is entitled, "The Future of Banking: How Consolidation, Nonbank Competition, and Technology are Reshaping the Banking System."

I now recognize myself for 4 minutes to give an opening statement.

Following the financial crisis, former Federal Reserve Chair Paul Volcker was once asked about financial innovation and regulatory reform, and he said, "The most important financial innovation that I have seen in the past 20 years is the automatic teller machine (ATM). It really helps people prevents visits to the bank, and it is a real convenience. How many other innovations can you tell me of that have been as important to the individual as the ATM, which is more of a mechanical innovation than a financial one?"

I don't bring this up to say that financial innovation is bad, and bank technology needs to stop at ATMs, but there is a point to what Mr. Volcker said. From the consumer perspective, the ATM is a wildly-useful product, and it is not such a complicated idea.

However, many so-called innovative and complex financial products, like credit default swaps or balloon mortgage payments, got us into a lot of trouble back in 2008.

But in the dozen years since the financial crisis, there have been many real innovations in banking with clear benefits to consumers. You can access your accounts and transfer funds with your smartphone.

Credit unions and banks have developed advanced fraud detection to address the rise in cybersecurity threats. I was recently notified that there had been some fraudulent activity on one of my accounts that was actually noticed within hours of the activity.

New tools in analytics help consumers set and track savings and spending goals. We are also seeing more financial institutions use artificial intelligence, machine learning, and algorithmic-based decisions. These technologies offer a great deal of promise, but also raise new consumer protection issues.

Another trend over the past decades has been the consolidation in the banking sector. In 1984, there were 18,000 different banks across the country. Today, there are less than 5,000, and the number of new bank charters has fallen to a record low.

The number of credit unions has also fallen from about 15,000 in 2004, to about 5,000 today.

With fewer banks and credit unions, there is less consumer choice when it comes to depository institutions.

But this is not to say that traditional financial institutions are completely without new competition. Financial technology companies, often referred to as fintech, have captured a larger and larger share of consumer mortgage and small business lending markets.

These firms are often not subject to the same regulations that banks and credit unions are, but often compete in the same markets. In April, this subcommittee held a hearing on the trends of financial institution charters. We looked back in history at the powers of the National Bank Act, the original purpose of industrial loan companies in examining how banking laws are being used and, in some cases, stretched to fit an evolving financial services sector.

As illustrated by that hearing, there are significant challenges for Congress and regulators to keep up with modern-day trends.

My time has expired, so I will now yield to Mr. Luetkemeyer, the ranking member of this subcommittee, for 5 minutes.

Mr. LUETKEMEYER. Thank you, Mr. Chairman. I would like to ask unanimous consent to insert Full Committee Ranking Member McHenry's statement into the record.

Chairman PERLMUTTER. Without objection, it is so ordered.

Mr. LUETKEMEYER. Thank you, Mr. Chairman, and thank you for having this important hearing today, and I thank our witnesses also for testifying before us. We look forward to your insightful information.

This hearing asks us to consider the future of banking, a very broad subject. In order to understand where banking is going, we need to examine what has happened to banking in the past.

At the turn of the century, there were 9,600 FDIC-insured banks. Today, there are a little more than 4,900. Potentially more troubling, the number of banks with less than a $100 million in assets has declined by 92 percent since 1985.

What are the leading factors driving consolidation in the banking sector? What are the practical impacts on consumers? And what are common-sense private-sector solutions to this problem? These are the questions we should be examining at this hearing today.

Consolidation in the banking sector has been occurring for the past 3 decades. However, there is no doubt that the impacts of a post-Dodd-Frank Act regulatory regime are hurting small financial institutions.

A 2020 FDIC study examined the per-unit costs associated with operating a community bank with below $10 billion in assets. They found that in the year 2000, the most efficient size for a community bank was $350 million. In 2019, the most efficient size of a bank was $3.2 billion. In short, the FDIC study found that the current regulatory landscape has created an ecosystem where size equals survival.

While community banks continue to consolidate, non-bank firms, including fintechs, have risen sharply in their absence. It is clear that fintechs have spurred innovation in the financial services sector and increased access to credit for consumers.

Much of this innovation and inclusion has come through bank-fintech partnerships. These relationships allow fintechs to innovate, while being regulated by bank regulators through their examination and supervision of a banks' third-party risk.

All of this information begs the question, what should Congress do? First, we should examine what specifically is driving up the costs for community financial institutions and look at ways of alleviating those costs through regulatory reform.

Second, we should examine the processes and requirements in place for de novo institutions. We saw the formation of 15 de novo institutions in 2020, a far cry from the 149 the year before Dodd-Frank.

Third, we should ensure that a bank-fintech partnership model remains intact. Unfortunately, my colleagues on the other side of the aisle are dismantling the bank-fintech ecosystem by reversing the OCC's True Lender Rule.

While Republicans are looking to solutions that allow the private sector to innovate in a manner that solves these problems, improves inclusion, and decreases banking deserts, my colleagues on the other side of the aisle have a very different view of the future of banking.

In just this Congress, we have seen the Majority put forward proposals to turn the Consumer Financial Protection Bureau (CFPB) into a public credit bureau, establish postal banking, and establish government control of the banking system through FedAccounts.

In fact, the recent Biden nomination for Comptroller of the Office of the Comptroller of the Currency (OCC) argued for FedAccounts even though, in her own words, it would, "end banking as we know it."

A government takeover of the banking system is truly one of the most radical ideas I have heard in my time in Congress, and yet it has become a mainstream tenet of the Majority's platform. It truly terrifies me that these ideas are receiving serious consideration in this committee.

At a time when the leaders of the House and the Senate are desperately pursuing Bernie Sanders' socialist agenda, and the President appointed an OCC Chair with hopes of ending banking, the future of banking couldn't be in more limbo.

I thank the witnesses for being here today. I look forward to discussing how Congress can and should allow the private sector to improve the banking system.

And with that, Mr. Chairman, I yield back.

Chairman PERLMUTTER. I thank the gentleman.

And seeing that the Chair of the Full Committee isn't here, I will take that last 49 seconds I had left for her to just say, given the challenges of keeping up with the present, I am excited for today's hearing. This hearing is about ensuring that 10 or 20 years down the road, we have a banking system that is innovative, consumer-driven, and competitive, and making sure it works for every American.

I would now like to introduce our witnesses. And I thank you all for appearing virtually.

First, I would like to begin with Paulina Gonzalez-Brito, who is the executive director of the California Reinvestment Coalition. Paulina has more than 20 years of experience working on economic justice and community empowerment issues, and currently serves on the board of directors for the National Association for Latino Community Asset Builders.

Second, Dr. Makada Henry-Nickie, who is the Robert and Virginia Hartley Fellow in Governance Studies at the Brookings Institution. Makada is an expert in fintech issues and equitable access to financial services, and formerly worked as a senior analyst with the Consumer Financial Protection Bureau.

Third, Sarah Jane Hughes is a university scholar and fellow in commercial law at Indiana University's School of Law. She is an expert on payment systems, online banking, and privacy issues.

Fourth, Desiree Jackson is the assistant vice president for treasury management at Beneficial State Bank. She is a member of the Communication Workers of America Local 9412, and has worked in the financial services sector for more than 25 years.

And finally, Jim Reuter is the chief executive of FirstBank headquartered in Colorado, and a friend of mine, who is testifying on behalf of the American Bankers Association. Jim started his career at FirstBank in 1987 and has worked in various departments within the bank including mortgage operations, IT, online banking, payments, contact center, and treasury management. He is the former Chair of the American Bankers Council.

Witnesses, you are reminded that your oral testimony will be limited to 5 minutes. You should be able to see a timer at the bottom of your screen that will indicate how much time you have left. When you have 1 minute remaining, a yellow light will appear. I would ask you all to be mindful of the timer, and when the red light appears, to wrap up your testimony so we can be respectful of both the other witnesses' and the subcommittee members' time.

And without objection, your written statements will be made a part of the record.

We will begin with Paulina Gonzalez-Brito. You are now recognized for 5 minutes for your testimony.

STATEMENT OF PAULINA GONZALEZ-BRITO, EXECUTIVE DIRECTOR, CALIFORNIA REINVESTMENT COALITION

Ms. GONZALEZ-BRITO. Good morning. Thank you for inviting me to join you today, Chairman Perlmutter and Ranking Member Luetkemeyer.

My name is Paulina Gonzalez-Brito, and I go by the pronouns they/them. I am Purepecha, Chicane, and my people come from the original people of Michoacan and Zacatecas.

I am the executive director of the California Reinvestment Coalition, or CRC, and we work to close the racial wealth gap.

From the stealing of land to the enslavement of Black people through housing, lending, and financial policies, the U.S. has always profited from the labor of Black, Indigenous, and people of color (BIPOC), while simultaneously denying us wealth.

As we continue to march down the path of mergers and acquisitions resulting in fewer financial institutions, the closure of branches, and less reinvestment, it is no surprise to anyone that communities of color are disproportionately impacted.

With the support of Chairwoman Waters, President Biden recently issued an Executive Order meant to improve regulatory oversight of bank mergers. It is imperative that regulators not rubber-stamp merger applications but give the mergers the scrutiny they deserve.

This year alone, in California, CRC and our members have negotiated three community benefits agreements to ensure that proposed bank mergers have a public benefit. The agreements with banks articulate community needs and how the bank will meet those needs and, therefore, further Community Reinvestment Act (CRA) implementation.

Just last week, U.S. Bank announced plans to acquire Union Bank. Currently, neither bank has community benefits agreements. In addition to looking at whether a merger will create a public benefit, regulators must also evaluate the possibility of public harm.

In the case of U.S. Bank's proposed merger with Union Bank, U.S. Bank plans to make cuts. These planned cuts are made possible by branch overlap in four big California counties—L.A., Orange, San Diego, and Santa Clara—where more than 50 percent of the Union's branches are located. It is our position that there should be no branch closures as a result of this merger.

As we experience branch closures, we are told to embrace fintech. In our society, we like to think of technology as the great equalizer. This is certainly not the case.

In fact, technology benefits financial institutions by lowering overhead costs, but the benefits to BIPOC communities are less clear. Case in point, the Federal Reserve of Kansas found that there are two reasons for the lack of adoption of financial services: financial exclusion; and individual exclusion.

These findings are consistent with what we see in CRC's Economic Wellness Promotora Program, which supports the financial well-being of low-income BIPOC families.

Black and Latinx participants reported experiencing poor and/or unfriendly service from banks. Participants expressed being made to feel not good enough or wrong or unwelcome when attempting to access banking products and services.

The encroachment of fintech into banking bring concerns of hypercharged harm. Venmo, PayPal, Square, SoFi, Google, Apple, and the growing number of tech financial services companies use complicated and rapidly-changing algorithms that process mass amounts of data to make credit decisions.

If technology advances faster than our understanding of it, regulation becomes very difficult, if not impossible, and the threat of resulting discrimination is greater.

In pursuit of profits, financial institutions will take as many liberties as they are given. Let's take Amazon as an example. Amazon has long been in the fintech space and has done so without becoming a bank and without banking regulator oversight or CRA obligations.

Amazon Lending advises sellers to apply for their loans and has effectively created a 21st Century company store. Amazon loans can only be used for inventory or marketing on the e-commerce site. And if a merchant cannot make a payment, Amazon can seize the merchant's inventory and collateral to pay back the loan.

Our communities lack access to safe, affordable credit and banking services. There is another solution to be considered.

We must nurture public banking, either through the creation of local public banks that are tied to the Federal Reserve or the creation of postal banking. Every American has a post office in their community. They should have a bank too.

Congress can stop the abuses of the foreseeable future by supporting a strong Community Reinvestment Act that explicitly considers race, enhances the role of community voices and community benefits agreements, downgrades banks that harm, and discourages further branch closures.

We also urge all regulators to develop a coordinated and robust regulatory response to fintech that ensures strong compliance with consumer protection and fair lending laws. Thank you for this opportunity to address you today.

[The prepared statement of Ms. Gonzalez-Brito can be found on page 54 of the appendix.]

Chairman PERLMUTTER. Thank you, Director Gonzalez-Brito.

Our next witness is Dr. Henry-Nickie. You are now recognized for 5 minutes for your testimony.

STATEMENT OF MAKADA HENRY-NICKIE, FELLOW, GOVERNANCE STUDIES, BROOKINGS INSTITUTION

Ms. HENRY-NICKIE. Chairman Perlmutter, Ranking Member Luetkemeyer, and distinguished members of the subcommittee, I am pleased to join today's hearing on the future of banking. I am Makada Henry-Nickie, a governance studies fellow at the Brookings Institution.

My comments today will focus on market trends, the rise of fintechs as consequential market players, and the impacts of these shifts on marginalized consumers. My comments on these issues are my own and do not reflect any official position of the Brookings Institution.

The U.S. is facing a major demographic transition driven exclusively by communities of color. In the last decade alone, Asian and Hispanic American populations grew by 36 and 23 percent, respectively.

But the financial services sector has yet to respond to these representational changes within the consumer financial market. Minority households systematically occupy status quo roles on the fringe, rather than sitting at the center of market models as gross drivers.

According to the FDIC's 2019 Banking Survey, 7.1 million households remain unbanked. The overwhelming majority of these households, 64 percent to be precise, were Black and Hispanic.

Indigenous communities have an unenviable, longstanding experience of exclusion. Despite modest progress in promoting financial inclusion, 16.3 percent of Indigenous Americans are unbanked, and are disproportionately exposed to alternative financial products such as predatorial payday and title loans.

The prosperity of the U.S. is stifled when the future growth segments are excluded from fully participating in the economy.

The Biden Administration has drawn on a comprehensive accountability model to orient the Federal Government's policy framework towards racial inclusion.

Now, while President Biden's racial equity agenda marks a sea change, it is only a first step towards closing profound racial wealth gaps. Financial intermediaries and regulators must do their part to ensure that the financial services ecosystem responds to the unmet needs of minority communities.

The Great Recession has dramatically altered the banking landscape as we know it. More than a decade after the subprime crisis, the banking infrastructure continues to contract.

In the years since the housing bubble, the number of commercial banks has fallen sharply from 7,300 institutions in 2007, to 4,375 in 2020. That is an astonishing 40-percent decline.

This shrinkage is in large part due to consolidation through mergers and acquisitions, with larger banks absorbing small ones.

The vast majority of these mergers and acquisitions unfolded in the community banking sector, which, according to the FDIC, accounted for 91 percent of this consolidation trend.

It is important to know that acquired community banks tended to be less profitable than their peers and were often cited as problematic by the FDIC.

Another concerning trend is a lack of new bank formation that has shaped the competition dynamics during the same time. A combination of enhanced regulatory oversight and market dynamics undermines bank formation and increases complexities in the post-crisis world.

Contrary to broader trends in select segments within underserved communities, these communities disproportionately rely on physical retail outlets to connect with mainstream banking.

This retail network is shrinking, contracting, and under threat with the increased and accelerated pace of mergers and acquisitions. The FDIC's 2019 survey underscored the importance of retail outlets to groups that visit branches more than 10 times a year.

Those are older Americans, people with disabilities, individuals experiencing regular income volatility, and Native peoples.

The hollowing out of the retail bank footprint also impacts the small business community. Studies have shown that bank closures adversely affect small business lending, and bank branches that have lenders—excuse me—with all bank branches allocate less capital to small businesses and those with branches in low-income communities.

Now, efficiency gains are celebrated, right? That is the mantra of merging institutions. But low-income communities rarely, if ever, realize these economies of scale.

Instead, the mergers have resulted in a rise in FHA loan denials, and substantial increases in interest rate loans on non-agency mortgages, particularly for subprime borrowers.

The lack of existing bank relationships is a defining characteristic for Black Paycheck Protection Program (PPP) applicants. Congress has a duty to create a framework to ensure that consumers remain protected during this dynamic innovation process in which fintechs and banks and nonbanks are vying to serve and find the right balance of a mix of products to bring to market.

Congress can take clear steps to protect consumers and restore their ability to hold innovators and abdicators responsible for their decisions.

This subcommittee should examine how to extend the authority of the Consumer Financial Protection Bureau (CFPB) to include oversight of the Community Reinvestment Act (CRA). Compliance with CRA is a crucial tool that allows regulators to hold lenders accountable, while deepening lending in low-income communities.

Again, thank you for hosting this critical conversation on the future of banking.

[The prepared statement of Dr. Henry-Nickie can be found on page 72 of the appendix.]

Chairman PERLMUTTER. Thank you, Dr. Henry-Nickie.

Professor Sarah Jane Hughes, you are now recognized for 5 minutes.

STATEMENT OF SARAH JANE HUGHES, UNIVERSITY SCHOLAR AND FELLOW IN COMMERCIAL LAW, MAURER SCHOOL OF LAW, INDIANA UNIVERSITY

Ms. HUGHES. Good morning, Chairman Perlmutter, Ranking Member Luetkemeyer, and honorable members of the Subcommittee on Consumer Protection and Financial Institutions of the Committee on Financial Services. It is a great honor to appear before you today to discuss topics that are of great consequence—bank consolidation, nonbank competition, and technology—and the manner in which they are reshaping American banking, some pieces for the good and other pieces, as other witnesses have mentioned, with less desirable effects in some respects.

My prepared statement touches upon many of these subjects, including just bank consolidation, the challenges that consolidation poses for small towns and rural communities that are still very important to us, including here in south central Indiana, how nonbank competition is changing banking, and the role that technology is playing in driving changes to banking services and availability, including for the partnerships that the chairman mentioned in his opening statement.

In the interest of time, I think it is important to realize that we are in a perhaps more robust phase of nonbank competitors. But we have basically been in this space, with nonbank competitors taking over pieces of bank action, for approximately 40 years, if not longer, because the credit card industry might be claimed to do that as well.

So, it is not like it is new. It is just that it is a little more robust, and it is based on the internet and other forms of online services that are available.

Some nonbank competitors have been around for a hundred years, and they were beginning to be very robust in the late 1950s and early 1960s, but not at the level we see today.

I would like to speak about industrial loan companies (ILCs) for a moment, because industrial loan companies have been around for quite a long time, since Congress authorized them.

The States and the FDIC are the regulators for industrial loan companies. They are subject to thorough investigation before they obtain their State charters and before they obtain FDIC deposit insurance.

I have no reason to believe that it is less robust than what happens with other State banks that the FDIC is reviewing, and as one of the witnesses mentioned, there have been a few—not very many—de novo banks, which we think of as rising to take the place often of what happens after banks consolidate.

ILCs are not in that space. The States have expanded the powers of ILCs and industrial banks since the late 1980s so that their powers now are very close to, if not identical to, the lending powers that other State banks have, and the FDIC insures the nonretail deposits that are there.

But it is the thorough supervision and examination by both the FDIC and the States that is very successful and has resulted in very few complaints of which I am aware. And, at least once a quarter, I review the complaint database for the CFPB just to be sure that I am still keeping current with that.

It is very hard to estimate how many fintechs are out there. We know that the American Fintech Council earlier this year revealed that it had 75 members, and they have, as I described in my prepared statement, some specific sorts of responsibility.

The fintechs also hold State licenses, either as lenders or as money transmitters, and like industrial loan companies, they are subject to examination and supervision by the States. They don't have FDIC insurance at this point, so they don't have the FDIC behind them.

But because they have this same State, boots-on-the-ground, close-to-consumers orientation in many cases with State regulators being in charge, they are not unregulated. And I think it is very important to realize that they are not unregulated, just as ILCs and State-chartered banks are not unregulated.

The Bank Service Corporation piece of my prepared statement is important because I am aware of the fact that Bank Service Corporation authority is pending in Congress, and with that, I would like to close my remarks by telling you that I am a big fan of State-chartered banks, and I am a big fan of State regulation of nonbank providers. I think they do a pretty good job.

Thank you for including me today.

[The prepared statement of Professor Hughes can be found on page 78 of the appendix.]

Chairman PERLMUTTER. Thank you, Professor.

The next witness is Ms. Desiree Jackson. You are now recognized for 5 minutes.

STATEMENT OF DESIREE JACKSON, ASSISTANT VICE PRESIDENT, TREASURY MANAGEMENT, BENEFICIAL STATE BANK

Ms. JACKSON. Thank you.

Good morning, Subcommittee Chairman Perlmutter, and members of the subcommittee.

My name is Desiree Jackson. I am an assistant vice president for treasury management services at Beneficial State Bank in Oakland, California. And I am also a proud member of the Communications Workers of America Local 9412.

Last year, my coworkers and I made history when we became the first group of bank workers to organize a union in over 40 years. And this past Sunday, we ratified our first union contract.

I have worked in the banking industry for over 25 years, including 18 years at Wells Fargo, so I am excited to share my perspective on the future of our banking system.

Frontline bank jobs are stressful. We are under extreme time pressures, and we know that mistakes can harm our customers. Whether or not a bank respects its workers' rights greatly impacts our stress levels. It is also a good predictor of whether a merger will impact us and our customers positively or negatively.

During my time at Wells Fargo, I worked in a call center as a customer service representative where I was responsible for opening accounts after they were sold.

When Wells Fargo bought other banks, like Norwest Bank and Wachovia Bank, it made our workload more intense. We had to do more with less. Our performance metrics got more excessive, meaning we had to complete all of our assigned work each day or we would get a talking-to by our manager.

We had to answer our phone by the second ring. Emails had to be responded to within 2 hours, and we had strict deadlines for opening customer accounts. But there was no opportunity to get raises even though the expectations of our jobs had increased.

Managers pressured us to work as many hours as necessary to complete our daily assigned tasks, like making sure every account was opened. But they didn't care how many hours we worked because the bank misclassified us as salaried employees so they didn't have to pay us overtime.

On top of that, departments closed, and people were laid off, instilling even more stress and fear. Basically, Wells Fargo used mergers to cut staff, even if it meant getting rid of experienced staff who were skilled at serving the best interests of our customers.

This management style is all too common in the industry. It means that bank workers often experience huge stress, and there are sometimes incentives for workers to take actions that harm consumers. That is why I strongly support the Financial Services Worker Bill of Rights.

Luckily, my experience at Beneficial State Bank couldn't be more different. Beneficial is a mission-driven bank, owned by a nonprofit foundation, and is committed to serving communities that need access to financial services.

When Beneficial has acquired small banks over the last few years, they have been like-minded community banks, enabling us to serve more communities in need. And no one lost their job, and there was an open communication process with much better transparency. We held monthly bank-wide meetings to explain what was going on.

And now, with our union contract, we will have regular labor-management meetings where we can discuss a range of issues, including how we can improve customer service.

The reality is there has been too much consolidation in the industry, and I want to make sure that small, mission-oriented banks like Beneficial can thrive and not be swallowed up by predatory megabanks.

That is why I think Congress should strengthen the merger standards to ensure that mergers are in the public interest and improve wages and working conditions.

Meanwhile, online banking is creating more cashless banks and reducing the number of brick-and-mortar branches, threatening the livelihood of 423,000 bank tellers in the country and possibly reducing access to banking for the underserved consumer who can't utilize the newer technology.

From my 25 years of experience in banking, I think there is room to ensure that employees are taken care of when there are mergers, and that is through unionizing.

Making sure frontline bank workers' rights are protected by empowering more of us to organize will not only reduce our unhealthy stress levels, but it will be better for our customers, better for our communities, and better for our entire financial system. Thank you for this opportunity.

[The prepared statement of Ms. Jackson can be found on page 92 of the appendix.]

Chairman PERLMUTTER. Thank you for your testimony, Ms. Jackson.

And our final witness is Mr. Jim Reuter. You are now recognized for 5 minutes for your testimony, sir.

STATEMENT OF JIM REUTER, CHIEF EXECUTIVE OFFICER, FIRSTBANK, ON BEHALF OF THE AMERICAN BANKERS ASSOCIATION

Mr. REUTER. Chairman Perlmutter, Ranking Member Luetkemeyer, and members of the subcommittee, thank you for the opportunity to testify today on the future of banking.

As a banker for over 34 years, this hearing could not be more timely given the changes underway in our industry. I am pleased today to speak not only on the behalf of FirstBank and our 3,000 employees, but also on behalf of the American Bankers Association (ABA), which represents banks of all sizes, and the 2 million women and men who work at those banks and serve your constituents every day.

Founded in 1963, FirstBank has grown organically to more than 100 locations in Colorado and Arizona. We are currently the largest bank headquartered in Colorado.

Despite our footprint, we were one of the first banks to join a real-time payments network and offer Zelle payment services to customers. While our business is banking, our commitment to the communities we serve goes well beyond that.

Our 300 bank officers sit on 2 to 3 nonprofit boards each, and our most recent Colorado Gives Day raised over $50 million for more than 2,000 nonprofits in 24 hours.

Before we look to the future, I would like to reflect for a moment on where banking stands today. As Federal regulators have noted, banks have been a source of strength during the pandemic, providing critical financial support for the economy while maintaining record levels of capital and deposits.

At FirstBank, we were the number-one bank in Colorado for PPP loans, originating more than 20,000, which helped save over 120,000 jobs in the State.

We also realize that the ongoing pandemic is not over, and many Americans are still struggling. Like many banks around the country, we continue to prioritize financial inclusion.

ABA has sounded the alarm on this issue and urged banks of all sizes to offer safe, low-fee, BankOn-certified accounts, which are helping to reduce the number of unbanked. Today, BankOn accounts are offered at more than half of the bank branches in this country.

Our industry is optimistic about the future, but like all businesses, we face challenges. You encouraged us to focus on how consolidation, nonbank competition, and technology are reshaping the banking system.

Bank consolidation is a long-term trend. Today, there are just under 5,000 banks in the U.S., down from nearly 18,000 in 1984, and we expect consolidation to continue for a variety of reasons.

The need for scale is the main driver. Banks at every level of the asset ladder are seeking to scale to invest in the ongoing digital transformation reshaping our industry.

At FirstBank, our strategy has been to focus on organic growth without significant M&A, but other banks are taking different approaches.

Bank consolidation has likely been accelerated by policy decisions, including a regulatory framework that imposes significant compliance costs and deters de novo bank creation.

One troubling new trend we urge this committee to review is that tax-exempt credit unions are increasingly using their tax subsidy to buy up tax-paying banks. From 2018 to 2020, more than 28 banks were acquired by credit unions.

Despite consolidation, banking remains a healthy, diverse, and highly competitive industry. As the banking industry consolidates, many of our biggest competitors have emerged outside the regulated banking space.

The list includes tax-advantaged lenders like credit unions and the Farm Credit System, monoline fintech firms, nonbank payment providers, and decentralized finance technologies like cryptocurrency.

Many of those competitors have business models that rely on a kind of regulatory arbitrage in which they can offer one or several aspects of banking services while avoiding the full banking regulatory framework.

We see this most clearly in the rise of payments charters, or special purpose national bank charters that would aim to provide payment system access to companies but would not be subject to the same regulations as banks.

In our view, the stringent rules in place for banks should be applied to others looking to offer bank-like services. Anything less than a level playing field will put consumers and financial systems at risk.

The pandemic has only accelerated banking's digital transformation. At FirstBank, we have more than 400 people in our information technology unit, up from 250, 5 years ago. ABA firmly believes that banks in the private sector will continue to drive this technological revolution.

The one innovation we don't need is the government trying to replace the nation's banks. We will continue to firmly oppose efforts to create direct consumer accounts at the Federal Reserve, or to turn the Postal Service into a consumer bank, or to create a central bank digital currency that disintermediates banks.

These are solutions in search of a problem that, if implemented, would drain deposits out of banks and undermine the valued banks that deliver convenient funds access and loans to consumers to support local economic growth.

Ultimately, these approaches would put at risk the many benefits of the modern banking system. Despite challenges, we believe the future of banking is bright, provided the policy environment continues to support growth and close gaps that promote regulatory arbitrage and put the financial system and consumers at risk.

Thank you for the opportunity to testify, and I look forward to answering your questions.

[The prepared statement of Mr. Reuter can be found on page 97 of the appendix.]

Chairman PERLMUTTER. Thank you, Mr. Reuter. Thank you for your testimony.

Now, I will recognize myself for 5 minutes for questions. And the first thing is, I will just say, being one of the older members of this committee, much of the consolidation, much of the reduction in the number of banks occurred in the late 1980s and 1990s when the savings and loan system failed, and many small and medium-sized banks across the country either went out of business or were acquired by others.

But there has been a continued reduction and consolidation of the industry.

Mr. Reuter, one of the principal reasons you cite is the need for financial institutions to scale up in order to invest in technology. As more banks and credit unions continue to scale up, either through mergers and acquisitions or organic growth, do you see the bar to entry becoming even greater for de novo banks?

Mr. REUTER. Thank you for that question, Mr. Chairman. I do see the bar for entry for de novo charter to be higher. One of the reasons is the regulatory burden. We have a number of regulations that haven't been reviewed for decades, and some of them have not kept up with the changing times.

The other one is investment in technology. I mentioned earlier that we went from 250 employees in technology up to over 500 in 5 years. Our annual spending has gone from $50 million a year to over $110 million a year.

Ranking Member Luetkemeyer pointed out a study that in 2000, $350 million was the asset size to be efficient, and today that has climbed to $3.2 billion.

So, when you think about someone starting a single-bank location or a two-bank location de novo charter, those barriers to entry are significant.

Chairman PERLMUTTER. Let me follow up then. You have said that we expect this consolidation to continue, and the ability to get a de novo charter seems to be pretty difficult.

Should we be concerned that we may be left with only a handful of banks and fintech companies in 10 or 20 years?

Mr. REUTER. I think the banking industry, at nearly 5,000, is still very competitive, Mr. Chairman, and while I think there will be continued consolidation, I think there is a place for community banks.

Clearly, we are one of those community banks, and you saw what we did with PPP. So, while I believe there will be continued consolidation to find efficiencies given the regulatory requirements, as well as the lift in technology, I think there will continue to be a diverse banking system.

But one thing I think is really important is a level playing field from a regulatory perspective with the fintechs. Many of them purposely are picking off parts of our business, avoiding holding deposits and different things, so they can avoid the regulatory requirements.

I think it is important that we have a level playing field, or you will drive even more bank consolidation.

Chairman PERLMUTTER. Thank you.

Dr. Henry-Nickie, can you talk about the role fintechs play as partners with small and medium-sized financial institutions, and do you think these partnerships help or hurt the smaller banks to compete with larger banks?

Ms. HENRY-NICKIE. Thank you for your question. I think you point to an important externality, a potential upside for community banks that do partner with fintech institutions.

As Mr. Reuter pointed out, the hurdles to transforming and modernizing community banks are substantial when it comes to transforming legacy infrastructure, old Cobalt Systems into new systems that can intersect with mobile banking that consumers have grown to expect and demand at their banks.

So, in that regard, I think these partnerships with fintechs are helping to: one, reduce the technical barriers; and two, really drag along the community banking sector.

And those benefits accrue to the communities, the local communities that these banks tend to serve.

I think, moving forward, we really want to be careful and mindful about how these vendor contracts are structured. What are the implications for consumers? Do these banks have full capacity on their staff to fully vet, to fully stand up contracts that are beneficial to their longevity in the system that doesn't sort of set them up for perhaps a picking off in the future?

I think, again, going back to where we started around these mergers and where fintechs are entering into the space, these community arrangements can be helpful, these partnerships, but always with a cautionary tag attached.

Chairman PERLMUTTER. Thank you for your testimony.

My time is about to expire, so I will recognize the ranking member of the subcommittee, the gentleman from Missouri, Mr. Luetkemeyer, for 5 minutes.

Mr. LUETKEMEYER. Thank you, Mr. Chairman.

And I thank the witnesses for being here today. It's an interesting discussion we are having this morning. I want to follow up a little bit on the chairman's question here with regard to banks and fintechs.

As the ranking member on the House Small Business Committee, we saw the banks being very, very effective with the PPP loans, and any problems with regards to fraud or misuse of funds seems to be pretty well located in the fintech part of this.

So, Mr. Reuter, let me just ask you this question: What about rules and regulations for fintech folks? I am not against innovation. I think it is important. We have to continue to do it.

But at some point, the PPP program points out the inability to control fintechs and some of the things they are doing, and shows the amount of fraud that could be perpetrated in that area. What do you think about the rules and regulations around them?

Mr. REUTER. Ranking Member Luetkemeyer, thank you for that question. I think the rules need to be much like a bank because their activities are very bank-like.

As I mentioned earlier, we were the number-one bank in Colorado with PPP loans. We are on the phone with those customers. We are forging relationships. It is not just a transaction for us.

With many of the online lenders, you fill everything out online, and you get a decision within minutes. So, you tell me how well they are vetting the business, how well they are understanding what the needs are of that business and taking a relationship approach?

To me, that is a fundamental difference between banks and fintech providers, and I do think there needs to be more regulation in that space.

Mr. LUETKEMEYER. Thank you. This week in The Washington Times, there is an article entitled, "The Death of Financial Privacy."

Now, the other party is wanting to weaponize the financial services system and the IRS to monitor all of the transactions of every bank account over $600. This is going to cause a tremendous amount of cost on all of the banks.

So, Mr. Reuter, are you set up right now to be able to handle that situation, to where you can forward on to the IRS every transaction of every person and every business in your bank over $600?

Mr. REUTER. We are not set up to be able to do that.

Mr. LUETKEMEYER. Do you have any idea what it would cost your bank to be able to do that?

Mr. REUTER. It would be significant. And I think the bigger issue as well is the concerns our customers would have over privacy.

Many people and the unbanked have chosen not to bank with banks because of trust, and I think reporting all the information to the government would not help us in that regard.

Mr. LUETKEMEYER. Even for the big banks, it is going to be a significant cost, but the community banks, it would seem to me, you are just going to actually run them out of business with an issue like this.

Professor Hughes, you talked a little bit about some of the rules, regulations, and size. I want to run something by you really quickly. It would seem to me that if you are going to try and regulate the local hardware store or you are going to regulate Walmart, there would almost have to be two different sets of rules for those folks because you couldn't regulate the local folks the same way you would a regular Walmart.

To take that analogy and put it into banking, a community bank with $100 million or $200 million versus JPMorgan, how can you use those same rules and regulations and apply it to the banks?

To me, this is one of our problems in causing banks to really have to comply with all of these rules. The cost is just running away, just like this new rule that is being proposed would cause them probably to be unable to do that.

So, do you agree that perhaps we need to size all of our regulations based on the size of the banks? In other words, small community banks would have one set of rules they would have to abide by but not necessarily every single rule that the big banks would have to abide by? Is that a reasonable expectation?

Ms. HUGHES. Yes. I think this is a very complicated question because we don't want to make community banks—and I have said in my prepared statement that I am a huge fan of community banks. They serve the community I live in and those around us very, very capably.

I don't think we want to make them targets for bad behavior by customers. So, I think the scaling of it would have to be done with great care.

I do think that there are rules that are being applied to community banks that make it harder for them to survive because of costs. And, to that extent, I heard Dr. Henry-Nickie and Ms. Jackson make claims that we need to be certain that we do not lose banks serving every community in the United States that can reasonably be served.

I am in favor of looking for opportunities to reduce regulatory burdens on community banks and community national banks to the extent that those regulations—that they are not participating in some of the same kinds of transactions that the giants in this country are participating in—

Mr. LUETKEMEYER. Professor?

Ms. HUGHES. Yes?

Mr. LUETKEMEYER. Thank you for your comment, Professor. I am out of time.

Chairman PERLMUTTER. Thank you, Professor.

Mr. LUETKEMEYER. I yield back.

Chairman PERLMUTTER. The gentleman's time has expired.

I would like to now recognize the Chair of the full Financial Services Committee, the gentlewoman from California, Chairwoman Waters, for 5 minutes.

Chairwoman WATERS. Thank you very much, Mr. Perlmutter, for this hearing. This is extraordinarily important. We have done considerable work dealing with our banks, but so much more has to be done.

Let me just say that, of course, most of the banks in this country take credit for the work that they did with our PPP loans. But, if you can remember in the beginning of the PPP loans, many of the big banks set up special portals for their concierge clients, and we ran out of money for the PPP loans, and we came back and we put in another $60 billion so that our minority depository institutions (MDIs) and our credit unions and our community banks would have an opportunity to participate more fully with PPP.

So, we thank those banks for having participated, but we still have to do work with the banks, when we are talking about PPP loans and the way that they were handled in the beginning with the portals, again, that served their concierge clients.

But, on consolidation, back in the day, there used to be hearings that were held by the Federal Reserve, where they invited the community in on mergers, and we had an opportunity to get people from our communities who were very much involved with oversight in their own way of these banks. We had an opportunity to weigh in on the mergers.

Now our committee, Mr. Perlmutter, must get back with the Federal Reserve, and we must open up this opportunity, because this business of mergers without real community involvement has to stop. And this is an issue that we must deal with.

Not only that, I am concerned that we get many complaints about banks, but people feel helpless to absolutely correct the problems that are created within the banks.

We have experienced a lot of this, and we know that a lot of work still has to be done in dealing with the servicing of these mortgages, where people find that fraud has been committed, and they have nowhere to turn, and on and on and on.

So, we have to pay more attention to servicing, and I think, Mr. Perlmutter, I want us to take a look at advisory committees. Some of the banks say they have advisory committees, but I have been thinking about—and we will talk about this—whether or not we need to have advisory committees for every bank, and not only at the headquarters level but at all of the community levels for the banks, so that people get more involved.

CRA kind of alludes to that in some way, that there should be advisory committees of some kind, and some of the banks say that they have them, but I don't think that they are real.

And so, I want to look at how we can get, for these branches in the communities, advisory committees for all of them, so the communities are invited in and they can participate in what is going on at the banks.

We know that some banks have improved their pay, their wages. We have had the banks in, and when we brought them in for oversight on our committee—they hadn't been in for 10 years—they began to do things before they came to the hearing, in terms of wages.

And, as you know, Bank of America, I think, is kind of the leader now in having increased the minimum wage up to about $20 per hour. So, we need to do everything we can to encourage that in every way that we can.

And when the banks—we will continue to bring them before us so that we can have them understand that we are very serious in this committee about doing what we need to do for all of the clients of the banks.

Let me just ask Ms. Jackson, do you think that it is wise for us to ensure that the Federal Reserve has these open meetings when mergers are being proposed, and do you think we should have these advisory committees at every branch in all of the banks? What do you think?

Ms. JACKSON. Thank you, Chairwoman Waters. I totally agree. I think it would be beneficial. I sat on various advisory boards in other arenas, and I would definitely like to see that happen—

Chairwoman WATERS. Thank you very much.

Ms. JACKSON. I think we can all benefit from that.

Chairwoman WATERS. And thank you for your contribution here today, to everyone who came here today to help us learn more about what we could and should be doing.

I yield back the balance of my time. Thank you.

Chairman PERLMUTTER. The gentlelady yields back.

The gentleman from Kentucky, Mr. Barr, is recognized for 5 minutes.

Mr. BARR. Thank you, Chairman Perlmutter, for your leadership in holding this very, very—

Chairman PERLMUTTER. Mr. Barr, can I stop you?

Mr. BARR. Sure.

Chairman PERLMUTTER. Apparently, I was supposed to go to Mr. Posey.

Mr. BARR. Sure.

Chairman PERLMUTTER. Mr. Posey, you are now recognized. I am sorry I messed up the order—well, now he is going to leave us.

Okay. You are recognized for 5 minutes. I will take away what I said about Mr. Barr.

Mr. POSEY. Thank you very much, Chairman Perlmutter. I appreciate it.

Professor Hughes, how should we measure the delivery of financial services to U.S. consumers, and what does your research suggest about how well the U.S. financial system meets those metrics?

Ms. HUGHES. That is a very interesting question, Congressman. In preparing for this testimony, I was thinking about the importance of serving rural and small communities, because one of the strengths of our economy is specifically due to the fact that we had banking services available across the country pretty early in our nationwide economy, with the railroads and telegraphs and things of that sort.

So, the lifelines of small communities include community banks and community national banks where people get loans, and small business lending is vital. Because we had an economy, when I was a child, where large corporations dominated the number of people who worked.

But that is not true anymore. Startups and small businesses, battered badly through the pandemic but helped by banks and others—small business lending is vital to the continued prosperity in our communities, to the ability of people to recognize the American Dream by building new businesses.

And Main Street cash services are also very important. We have heard from time to time that there have been problems with banks banking Main Street businesses that were cash-intensive. So, I would like very much to see the services that are needed by consumers and small businesses to be an important point of focus for the committee as a whole and for this subcommittee in particular.

Mr. POSEY. Thank you. Can you comment on how the course of financial system regulation has impacted the incentives for bank mergers over the last several years?

Ms. HUGHES. We see ebbs and flows in the interest of bank regulators in approving mergers and acquisitions, but mostly we have been seeing encouragement or not dissuasion from that.

And I think that there is a concern that we are seeing a lot of mergers and acquisitions at the moment. There is a lot of money, capital around to assist with this, and that is fair. But I think we need to continue to have a well-balanced dual system which includes the States as charterers of banks and ILCs and licenses for other kinds of providers of these services.

Mr. POSEY. Have recent regulatory changes in bank capital requirements, such as risk-weighted capital, provided incentives for banks to merge?

Ms. HUGHES. I don't think there can be much question, although I do not have data to prove it. I think the capital requirements, especially as applied to small banks, may be a problem, but that is something for which I know there is some data, but I don't have the data. I suspect that the American Bankers Association would have some of that data, and that other organizations would as well; I just don't.

Mr. POSEY. Okay. Can you explain how scale economies in banking and other financial services have played a role in driving the bank mergers?

Ms. HUGHES. Certainly. As Mr. Reuter was testifying, the cost of technology, the cost in certain ways of compliance has continued to grow, and we have added responsibilities without necessarily looking at older requirements to see if they are still needed or if they are in some ways duplicative.

So, scalability is a big factor, I believe. It is not just how many deposits you have or how much unimpaired capital and surplus you have to use for the bank measure of making a loan if you are using section 84 of the National Bank Act, for example, but it is a big factor driving consolidation, and it has been a big factor all the way back to the Supreme Court's first case, *Philadelphia National Bank,* which continues to be the standard for mergers, even when the market has change very dramatically.

Mr. POSEY. Thank you. I see my time is about to expire, and I yield back.

Mr. REUTER. Mr. Chairman, could I make a—

Chairman PERLMUTTER. Mr. Reuter, did you have something you wanted to add?

Mr. REUTER. I just wanted to comment that the American Bankers Association has been very supportive of tailoring, which would make a huge difference in what we are talking about here.

Chairman PERLMUTTER. Thank you. Thank you, Mr. Posey. The gentleman's time has expired.

The gentleman from New York, Mr. Meeks, who is also the Chair of the House Foreign Affairs Committee, is now recognized for 5 minutes.

Mr. MEEKS. Thank you, Mr. Chairman, and thank you for holding this very timely hearing.

Let me ask Mr. Reuter first, in the past several years, we have seen that it is becoming more difficult for new banks to be created to help serve their communities. And this is especially true in communities where bank consolidations have led to access challenges for people of color, but, particularly in districts like mine, they are becoming banking deserts.

So What do you believe is the biggest challenge to de novo bank charters, and what do you think that we can do in Congress to assist and ensure that de novo banks are successful?

Mr. REUTER. Thank you for that question, Congressman Meeks. As I mentioned in my opening testimony, there are two things I think make a big difference: regulatory burden; and the investment required in technology. U.S. policymakers could make a big difference on the regulatory burden by tailoring. We as a bank are very different when compared to JPMorgan Chase and Bank of America, yet some of the compliance infrastructure and things we have to put in place are very much the same.

From a technology standpoint, there are great opportunities for banks to partner with fintechs and we are doing that every day, but where it becomes an issue is when we are competing with those same organizations or like organizations and they are not regulated at the same level. That drives up our cost of business because we are competing with a branch infrastructure that they do not have.

I agree with you wholeheartedly that branches are very important in the community, and it is something that we take very seriously.

Mr. MEEKS. Thank you. Thank you very much for that.

Let me ask Ms. Gonzalez-Brito, your organization is very engaged in the process of bank mergers, particularly analyzing bank mergers and community benefits. How banks comply with the Community Reinvestment Act (CRA) is critical to that analysis. As you know, the banking regulators are rethinking the CRA's regulatory framework.

So my question to you is, in what ways can CRA play a more meaningful role in the bank merger process, and are there specific policies this committee should advocate for regarding CRA's role in bank mergers?

Ms. GONZALEZ-BRITO. Thank you for that question. In terms of CRA, we agree with Chairwoman Waters that hearings are extremely important for bank mergers, and we would ask that the CRA require hearings and require community benefit agreements in order to encourage banks to actually meet with the community and engage around community need.

The other piece that I think is incredibly important is that CRA be race-conscious. It is something that would really ensure that we are meeting the needs of Black, Indigenous, and people of color. And so we really need to ensure that, as CRA moves forward, these things are included.

And I would just add that the Bank Merger Act is also important to ensure that review of mergers and acquisitions is not harming communities.

Mr. MEEKS. Thank you for that.

I will go to Ms. Hughes quickly, because there are a lot of issues and questions in regards to fintechs and fintech companies. And I heard some talk, for example, that fintech companies operate the way they were doing to help with the PPP loans efficiently and effectively. I agree with Chairwoman Waters and her statement. We had to do certain things on our side also.

So, it is something that is important. But we have this debate going on oftentimes in regards to fintechs—I was talking to some members of my staff who actually say that they don't know the last time that they visited a physical bank. I talk to my daughters, who are young, and they are now doing things online with loans and basically utilizing fintechs.

Nevertheless, as indicated, fintechs are largely dependent on banks to meet their commitments to their investors and their customers also. And just this past August, the FDIC and the OCC issued guidance for how banks and fintechs could partner and the concerns that existed, some of which were mentioned by the witnesses here today and other Members.

So, Ms. Hughes, what is your reaction to that recently-issued guidance, and are there legal or regulatory gaps with the bank-fintech partnership model that Congress should still consider looking at and possibly closing?

Ms. HUGHES. Thank you so much, Congressman Meeks, for that question, or Chairman Meeks for different purposes, for that question.

The August 2021 guidance that was issued for community banks to use fintech partners, I think is going to be very valuable. I think Congress should pay careful attention to what it does and whether it begins to resolve the kinds of questions that community banks have had in this arena so that they can take advantage, as I mention in my prepared statement, of some of the facilities and bring them in as vendors. I am going to use, "vendor," not, "partner."

Chairman PERLMUTTER. Professor Hughes?

Ms. HUGHES. Yes.

Chairman PERLMUTTER. I am going to have to cut you off. The gentleman's time has expired.

And now, I would like to recognize the gentleman from Kentucky, Mr. Barr, and I mean it this time.

Mr. BARR. I thank Chairman Perlmutter for that, and I thank him also again for his leadership, and for holding this very, very important hearing that underscores the problem that we are seeing in bank deserts, with bank consolidation, and with the lack of new bank formation that is impairing our local economies.

I applaud my good friend, Greg Meeks, for identifying this problem in his area in a more urban congressional district. I have a similar problem with rural banking deserts in Kentucky. We have talked about the solution. I also want to applaud my friend, Mr. Auchincloss, for identifying this in a more suburban district.

And the data on the dearth of de novo bank formation in recent years, combined with the trends in bank consolidation and closure, are troubling to all of us, because too many communities are left without access to traditional financial services.

This committee advanced Mr. Auchincloss' bill that calls for a study, and I appreciate the American Bankers Association and Mr. Reuter for pointing out that the ABA endorsed Mr. Auchincloss' bill that would commission additional studies.

But I would respectfully, Mr. Reuter, argue that another study is insufficient. You have identified yourself in your testimony that we know what the solution is. The solution is tailoring, regulatory tailoring.

And my bill, which is also, Mr. Reuter, endorsed by the American Bankers Association but was not mentioned in your testimony, is the actual solution. It is the solution that you just prescribed. H.R. 2561, the Promoting Access to Capital in Underbanked Communities Act, would provide targeted temporary phase-in of regulatory capital requirements to fuel new bank formation and bring banking services to underserved areas.

This is precisely the bill, Mr. Reuter, that your organization has endorsed. It goes beyond what Mr. Auchincloss has done. I applaud Mr. Auchincloss for his leadership. I applaud the ABA for endorsing his bill. But his bill, respectfully, is just another study. My legislation is the solution. It is the solution to the lack of new bank formation in Mr. Auchincloss' district. It is the solution to the lack of new bank formation in my rural district, and it is the solution to the lack of new bank formation in Mr. Meeks' district, an urban district.

So my question to you is, why should we have another study? Why shouldn't we just go ahead and pass the ABA-, ICBA-endorsed legislation that actually implements the regulatory tailoring that is required, Mr. Reuter?

Mr. REUTER. First of all, Congressman Barr, thank you for your sponsorship of that bill. And I agree with you. I think another study just lets more time go by and more bank consolidation occur. So, I agree 100 percent.

Another thing I would like to point out in the cost of a de novo is one of the things you have to raise to start a bank is capital. And what you are seeing is some individuals and some groups form a fintech versus a bank because, due to the regulatory arbitrage, the market is valuing them higher.

And anybody who is making an investment to run a bank or run any company needs to have a return, so, again, that's why a level playing field is very important. But thank you for your sponsorship of the bill, and I agree with you wholeheartedly.

Mr. BARR. Thank you very much.

And, Professor Hughes, let me talk about why this is so important. A recent FDIC study showed that large banks are much more likely than small community banks to have minimum requirements for small business loan amounts and less likely to offer tailored small business loan products. Often, small businesses rely on the relationship banking and the community ties of small banks, especially those banks that are de novo charters and smaller. PPP was an illustrative example of the value of small community banks for the smallest businesses.

Professor Hughes, what impact does the trend in consolidation and the closure of community banks have on small businesses, particularly in rural, underserved areas, and what does it mean for small entrepreneurs and startups?

Ms. HUGHES. Thank you, Congressman Barr, for that question.

It is very important to have lending facilities in communities of the types that we have just been discussing: inner city deserts small community and suburban areas; and rural communities. And we need to have robust opportunities for lending maintained in those communities so that all of the capital in the country doesn't flow to larger cities, as we have been seeing in some cases over the last 50 years.

So we need to maintain the ability and we need to be certain that there are realistically tailored—I am going to use that word because I think it is the best word we have heard today for this—tailored ability for small banks to originate loans, smaller loans for startups, perhaps, than they might give other kinds of businesses because we need startups. We need small businesses. They are the growth opportunity. And we need to be certain that we have the best means of addressing the way in which startups and small businesses contribute to our economy, employ lots of people, provide benefits, but also keep our small communities alive—

Chairman PERLMUTTER. Professor, I'm sorry; I have to cut you off again. Everybody keeps asking you their question right at the end of their 5 minutes. So, I apologize for cutting you off.

I would like to now yield 5 minutes to the gentleman from Georgia, Mr. Scott, who is also the Chair of the House Agriculture Committee.

Mr. SCOTT. Thank you, Chairman Perlmutter.

Ladies and gentlemen on the panel, I am concerned about how technology and artificial intelligence is reshaping our banking system. And nowhere is my concern as great as it is impacting African Americans. Let me share with you why I say that.

According to the Census Bureau, the rate of home ownership for African-American families sits at 44 percent, versus 74 percent for White people. This huge and dramatic 30-point gap is a major contributor to racial economic disparities, and it is especially impactful in home ownership, which is where we develop and nurture our wealth consideration.

So, I am concerned that this new technology, the use of artificial intelligence, and this inherent bias seem to be contributing factors in rejecting Black home loan approvals. And not only do Black home applicants receive higher loan rejections, they also suffer from race premiums on interest rates, paying as much as 8 percent or more on mortgage interest.

Ms. Hughes, you and Ms. Henry-Nickie,tell me, in your opinion, am I right here? Can you all see this disparity? And how detrimental is this secret bias hidden in some fintechs' lending systems for African Americans and other minority consumers who may be seeking a mortgage? How impactful is this?

Ms. HUGHES. Congressman, would you like me to go first or Ms. Henry-Nickie to go first?

Mr. SCOTT. Oh, I would love for either one. Go ahead, Ms. Hughes, and then Ms. Henry-Nickie. I want to get both of your points on this. I only have 2 minutes.

Ms. HUGHES. Fair lending laws in the United States apply to banks, and they should be not causing either unwarranted rejections of mortgage applications or race premiums in applications.

I have not had an opportunity to study the degree to which fintechs and artificial intelligence may be contributing to a shift, but it is conceivable that Dr. Henry-Nickie has more data on that subject. So while I believe that we need to be sure that people are evaluated fairly, I don't have the data to give you a better response. I would ask—

Mr. SCOTT. Ms. Henry-Nickie, would you comment, please?

Ms. HENRY-NICKIE. Thank you. You raise a crucial, important question that nobody else has sort of addressed today, and that is, what is happening to the state of the banking system when it comes to broadening access to credit for African American and Hispanic communities? And at the heart of that, at the heart of your question stands fintech.

To Mr. Reuter's point, leveling the playing field means that we need to figure out ways to ensure that our consumer protection framework applies equally to banks, nonbanks, and fintech lenders. There is a good amount of research coming up showing that fintechs have done an incredible job, I think a commendable job in expanding access to credit, but they are capable, just as their conventional lender counterparts, of reproducing particularly pricing disparities.

At the heart of this is the kinds of data sources that they draw on to inform the machine learning algorithmic models. We have talked ad nauseam about machine learning bias here. And all of these are in play around suppressing that 44 percent number and driving it even lower.

We need the CFPB to have a leg up when it comes to fairly protecting consumers across all of the means, particularly when it comes to fintechs. And they are shaping the market, but they are escaping their responsibility on the oversight around consumer protection. And that is what explains and is at the heart of how these disparities will continue to grow and not improve in the future.

Mr. SCOTT. Thank you very much.

Chairman PERLMUTTER. I thank the gentleman.

Mr. Loudermilk from Georgia is recognized for 5 minutes.

Mr. LOUDERMILK. Thank you, Mr. Chairman.

I have been concerned about the future of our marketplace lending ever since the Majority made the misguided decision to restrict access to credit for low- and moderate-income consumers by replacing the OCC's True Lender Rule. Both the True Lender and the Valid-When-Made principles are essential to having a robust financial lending nationwide marketplace.

Ms. Hughes, how have the bank-fintech partnerships been affected by this returning to the legal uncertainty that we were in a few years ago?

Ms. HUGHES. The True Lender Rule, as I said in my statement, had big support and lots of criticism. But the concept that was underlying it that was very important to me was the concept of assigning specific responsibility for complying with Federal and State law.

So, the True Lender Rule had that benefit. It did have some pieces that particularly irritated the States from their traditional interest in consumer protection. And I think it is unclear right now how much the repeal will affect that marketplace, but I think it is worth paying attention to on a longer term.

However, I would say that one of the reasons that makes this complicated is the True Lender Rule cannot come back unless Congress specifically authorizes the bank regulators to engage in regulation in that respect.

My hunch is that the uncertainty that was expressed will continue to a degree, and one of the questions that is present in this is, should the partners of banks, as opposed to the banks themselves, be entitled to exportation of rates that we have had since the Civil War, in the National Bank Act?

Mr. LOUDERMILK. Thank you for that. One of the things that any business needs is some level of stability, and uncertainty creates problems in the market, which basically hurts the consumer.

Other concerns I have is—one is I have always thought that George Orwell's, "1984," was a futuristic novel, but, based on some of the proposals that we have been seeing coming out of the other side, it appears that my colleagues on the other side of the aisle actually see it not as a novel, but as a best-practices guide for Big Government.

We have just heard about the proposal to monitor every American's bank accounts. That is truly Orwellian, in my opinion. One of the other proposals we have heard recently is having the Federal Reserve or the U.S. Postal Service become a bank. This would have the government essentially replace the private sector banking system and give the government in itself direct access to everyone's transactions.

Apparently, this is what the Administration wants, because the President's nominee for Comptroller of the Currency said just a few months ago, "We should end banking as we know it," which inevitably would be taking away the private sector from it.

Ms. Hughes, what would the consequences be for consumers and the economy under these types of proposals?

Ms. HUGHES. Yes. Congressman, frankly, I am not certain that the idea of postal banking is a good one, when we have so many options currently in some communities and we need to build, through de novo applications and resistance to closing of branches. I don't see a need for postal banking to be allowed, even though it was a factor and it was still present in some way when I was a small child.

I think that I would prefer to have the banking system, in many respects, be made more robust in these communities that some of your colleagues across the aisle have been discussing.

I think that the banks already monitor the influx and outgo of every account. My understanding of the proposal is that it would require additional reporting, not additional recordkeeping, because the banks have to keep records of every transaction down to about $100, if not more, and they have been doing that for many years.

But reporting at that level is a very different matter, and one that I understand at some level the interest in, and at other levels, I think that would be a crushing blow of compliance responsibility and cost for the banks that are serving rural, suburban, and small towns and small businesses. Especially for small businesses, that would be very burdensome, and it would bother me greatly.

Mr. LOUDERMILK. Thank you, Mr. Chairman. I yield back the balance of my time.

Chairman PERLMUTTER. The gentleman yields back.

Mr. REUTER. Mr. Chairman, could I make one comment?

Chairman PERLMUTTER. Sure, Mr. Reuter, go ahead.

Mr. REUTER. I would like to comment on the Federal Reserve holding direct consumer accounts and put a little exclamation point on the impact it would have for us as a bank. Sixty percent of our deposits are consumer retail deposits, and that is what we put into work into our community.

And so, it is a bit mind-boggling for me to think that someone in Washington, D.C., would know better how to deploy those deposits in our community than the 3,000 employees I have who live here, work here, and send their kids to school here. So, I find that proposal very troubling.

Chairman PERLMUTTER. Okay. Thank you, sir.

The gentlewoman from New York, Ms. Velazquez, who is also the Chair of the House Committee on Small Business, is now recognized for 5 minutes.

Ms. VELAZQUEZ. Thank you, Chairman Perlmutter. Thank you so much for this hearing.

Ms. Gonzalez-Brito, in 2018, California became the first State in the country to enact Truth in Lending Act (TILA)-like requirements for business purpose loans. Senator Mendez and I are currently preparing to reintroduce small business TILA legislation here at the Federal level.

First, can you please explain how the enactment of this legislation in California has brought some much-needed guardrails for small business loans, particularly those offered by nonbank lenders, without impacting the availability of credit?

Ms. GONZALEZ-BRITO. Thank you, Congresswoman. This is a really important question. We are really proud of our State Truth in Lending Act in California. We helped to make that a reality, along with the Responsible Business Lending Coalition.

So what this provides, what the law provides is, as small businesses have a hard time accessing credit with traditional banks, they often are stuck with looking at these very expensive, high-cost lenders.

And so, it is imperative that this law does allow small businesses to know the details of the loan they are getting into so that they can make better decisions.

I would say that TILA in California, through rent bank charters and industrial loan charters, banks are evading or trying to evade laws, so we have to be really careful about that, where they try to secure a charter outside of California in order to not have to be subject to the State laws.

Ms. VELAZQUEZ. Can you also talk about why legislation at the Federal level is so necessary?

Ms. GONZALEZ-BRITO. Because of the evasion by charters at the local level, it is really important to have Federal legislation in order to be able to stop that kind of evasion of consumer protection laws at the local level, and we support that.

Ms. VELAZQUEZ. Thank you.

Ms. Jackson, Mr. Reuter, what steps is the banking industry taking to increase the number of branches in low- and moderate-income (LMI) communities and communities of color, and how can Congress help promote the number of branches in this community?

Ms. Jackson, let me start with you.

Ms. JACKSON. Okay. Thank you for your question. And, basically, I am not that knowledgeable about it, but what I will say is that I think that the banking industry has taken steps to make banking easy and accessible for all, regardless of whether there are branch locations down the street.

We just want to use online banking and mobile banking and bank from your business and office settings, and convenience and accessibility are all important.

Ms. VELAZQUEZ. Mr. Reuter?

Mr. REUTER. Congresswoman, I would answer with a couple of things. I would agree with Ms. Jackson. We are making lots of technological tools available. But I will also tell you that, in addition to branches, our officers and employees are on the ground in the community.

One of the fundamental changes in banking is that people don't walk into a branch as often for a loan anymore, even a mortgage. We are meeting at their home, or whatever the case may be. At the same time, I would also tell you there is a very rigorous process with CRA, when we are going to open or close a branch, to look at the impact to an LMI community. So, there is existing regulation in that area.

But part of the nature of this hearing is how banking is changing, and, as Ms. Jackson pointed out, it is technology, but that has also put us on the ground more. So, I would argue that feet on the ground, walking a neighborhood, is really powerful as well.

Ms. HENRY-NICKIE. Can I just add a comment to the record there on this question? We have an opportunity to revisit the Community Reinvestment Act. And there are serious questions around the utility, the value that retail branches bring to communities of color and low-income communities in particular.

The goal should be in this sort of discussion how to encourage the growth, but not just encourage the growth of banking, but also how to maintain the infrastructure that we already have. There is no one one-to-one replacement of, close a branch and then switch a consumer online to a mobile application.

We know that relationship-building is so incredible for small businesses, particularly those that need to walk in with their bank statements and explain why perhaps during the last 2 weeks, inventory was low and that impacted cash flow.

So, as the Acting Comptroller has signaled, he is ready to revisit this Modernizing CRA Act, let's tailor the presence of the banking infrastructure to the communities that need it most.

Ms. VELAZQUEZ. We saw it during COVID when all of those minority and underserved communities that didn't have branches of banks in their communities or preexisting relationships, how difficult it was for them to access the help that they needed.

Thank you, Mr. Chairman, I yield back.

Chairman PERLMUTTER. The gentlelady yields back.

The gentleman from Texas, Mr. Williams, is recognized for 5 minutes for his questions.

Mr. WILLIAMS OF TEXAS. Thank you, Mr. Chairman.

As Democrats try to figure out how to pay for their massive expansion of government programs through the reconciliation process, they have come up with a proposal that would force banks and credit unions to report all inflows and outflows of customers' bank accounts over $600 to the IRS. When I first saw it, I thought it was a joke.

Now, there are many issues with this type of proposal. I want to just name a few of them. From a privacy perspective, the IRS does not have a good track record of using Americans' tax data responsibly. We saw during the Obama Administration that conservative nonprofits were being targeted for their beliefs, and this proposal has the potential to take this kind of overreach even further.

From a data security perspective, the IRS is the target of over a billion cyber attacks a year. We don't have the clarity on how all this additional data on Americans' financial transactions will be kept secure from the bad actors.

From an administrative perspective, it would be extremely costly for financial institutions to implement, almost impossible. We would be better off if banks could do what they are supposed to do and be focused on hiring more loan officers to get more money to

Main Street businesses, not dealing with increased compliance costs, hiring more compliance officers, and creating less opportunities for small business to borrow money.

And, finally, the Democrats are claiming that this will generate over $200 billion in new tax revenue. Well, that is a bogus number. It is an absurd estimate, based on half-thought-of and half-baked assumptions with no grounding in reality. But why should reality get in the way of a good story, right?

So, as you can tell, I have a lot of issues with this proposal. But, Mr. Reuter, I wanted to get your thoughts on it as well, since you have been a banker for over 34 years. Can you discuss some of the negative consequences that this new reporting proposal would place on your bank—and you have done it a little bit today—and thousands of other financial institutions all across the country if it were to become law?

Mr. REUTER. Thank you for that question, Congressman Williams. And you did a great job of summarizing my concerns, privacy being the first. I think a lot of individuals will rethink whether to have a bank account if they think everything they have is being reported to the IRS.

Also, security—no matter how well the IRS does their job, they are a much bigger target. And if we increase the pot of gold, if you will, sitting there with everybody's transactional information, I only think the attacks will increase.

And then, administratively, the cost would be significant. I know that Professor Hughes mentioned that we already track data, but it would still be costly to report it. We don't track it in the manner that is being contemplated here. We might look for anomalous activity or fraud, but we aren't tracking it in a way that meets the format of what the IRS is looking for.

And putting this burden on the banking industry, the purpose of this hearing, one of the things I am hearing is branch closings, consolidation, all of those concerns. This is yet another regulatory burden that would only further consolidation in the industry, which I don't think anybody on this witness stand or in this hearing wants to see more of.

Mr. WILLIAMS OF TEXAS. Thank you. You did a great job with PPP, and everybody talked about it, and now we are going after you. It doesn't make sense.

We heard in this hearing that innovation will help drive financial inclusion.I couldn't agree more and think we need to empower the private sector, new concept, empower the private sector to come up with new solutions to give more people access to financial services. Unfortunately, Democrats want to make this harder by increasing taxes on businesses and decreasing their incentive to bring these new innovations to the marketplace.

So, Mr. Reuter, with the time we have left, I wanted to give you the opportunity to discuss the effects of increasing taxes in a time that it is just unbelievable that we think it would put more burden on the taxpayers and small business would have on innovation in the banking industry?

Mr. REUTER. Any time you increase taxes, you take money out of the economy that is put to work. You reduce capital. You reduce retained earnings and funds available for investment. I am opposed to increased taxes, because I think it will act against the stimulus and the momentum we have in the economy right now. So, I just think it is a bad idea.

Mr. WILLIAMS OF TEXAS. Well, you are right. And the economy still is pretty good because many of the 2016 tax cuts are still in force. But to increase taxes is a total burden; it is a total downer for small businesses. Small businesses are already playing defense, because they don't know what the heck is down the road, and it gets into less jobs, less opportunity, basically less taxpayers. So, we need to cut taxes.

With that in mind, Mr. Chairman, I yield back.

Mr. FOSTER. [presiding]. The gentleman from California, Mr. Sherman, who is also the Chair of our Subcommittee on Investor Protection, Entrepreneurship, and Capital Markets, is now recognized for 5 minutes.

Mr. SHERMAN. Thank you. I will start with a few observations, and I actually have a question or two hidden in here somewhere.

I want to commend the chairman of this subcommittee for the passage of the SAFE Act as a provision of the NDAA. Several of us have cosponsored that legislation. And the idea that those who engage in legal business actually carry around huge quantities of cash is absurd.

I also want to point out that this is a [inaudible] Subcommittee in that I believe four—well, four of the people who have already asked questions are Chairs of their own committees in the House of Representatives.

One of the bills we are considering here today that is listed for consideration in the UA is the Third Party Vendors Act. I have concerns about this. [Inaudible] the subject of a separate hearing. I think that we would want to know whether the existing authority to force credit unions to sever relationships with problematic vendors is sufficient.

The questioner just before me talked about our efforts to enforce tax laws, and it is clear what some in the other party and maybe even a few in my party would like to see, which is that the new tax become a tax only on wages. Wage earners get a W-2 form to collect [inaudible].

But an awful lot of the income in this country is raised through profits and capital gains, so to make sure that increasingly sophisticated mechanisms are available to hide that from the IRS and scuttle any effort for the IRS to keep up with those methods.

Then, we see an effort to take the cryptocurrency alternative of hidden money. Who wants to hide their money? The [inaudible] occasional terrorist to evade taxes. We are on our way to a situation where the income tax nominally affects the wealthy, but actually affects only wage earners.

I am concerned with the industrial loan company loophole to the basic rule in our economy, which is that we keep commerce separate from financial services. We see that [inaudible] are still looking toward creating a financial institution.

I commend Chuy Garcia for his discussion draft. He has done a good job of grandfathering certain ILCs because they have been fine. But we see that Rakuten, in effect, the Amazon of Japan, is looking to create an ILC here in the United States.

Ms. Henry-Nickie, what risks do you think are associated with having a Walmart or a Japanese alternative given an ILC and FDIC insurance [inaudible]?

Ms. HENRY-NICKIE. Congressman Sherman, what I think I heard you ask is, what are the risks of having these nontraditional players, large players, now sort of show up and shape the financial services market? And I think the risk to consumers is great. These institutions do not come to this market with an organic culture of consumer protection, an organic culture of building and creating wealth for communities of color.

And so, I try to think about systemic solutions and harken back to the CFPB's larger participant rule, that availability, that jurisdiction that is available to the CFPB, and hoping that they, under new leadership, will be more aggressive and assertive in revisiting the kinds of institutions that fall under a larger participant rulemaking, and be more flexible.

When you have Amazon, to Ms. Brito's testimony, playing in the financial services space, deciding who gets credit, who gets to sell, and really sort of shaping the lives of startups, entrepreneurs, and small businesses, particularly for minority-owned and women-owned businesses, we want those activities to be examined, and to be supervised.

We want there to be substantive guidance around these fringe intermediaries that seem like they are on the edge of the market, but they are so large. They are shaping the market and changing all of the trends even as we speak here. So, I really want us to re-examine how the CFPB does its work there.

Mr. SHERMAN. We have heard from many Members whose constituents are trapped in a banking desert. And if you are in a desert, you can become delirious. You can run toward a mirage. You can drink brackish water. And we have to make sure that those answers [inaudible] not mirages.

I yield back.

Mr. FOSTER. Thank you.

The gentleman from North Carolina, Mr. Budd, is now recognized for 5 minutes.

Mr. BUDD. I thank the chairman, and I thank the panel as well.

We have seen a lot of peer-to-peer payment services come on the scene in the last several years, including ones where they don't have to hold traditional bank accounts. They can make payments and transfer money. There is a lot of great promise here to help underserved communities.

This question is for you, Ms. Hughes: How can fintechs and banks work together? How can they collaborate to expand access to financial services, especially for these underserved communities?

Ms. HUGHES. This is a very interesting question, Congressman Budd. I think that we have to be very careful to protect community banks and community national banks and smaller regional banks, as Mr. Reuter suggested, by not taking deposits away from them.

I am concerned every time I see an advertisement that suggests that you can deposit money with somebody who isn't claiming to be a bank. I realize that they may have a bank supporting them, but I think we should be very cautious about that, even though there are opportunities for inclusion in some of those areas that fintechs can provide.

But I would prefer to see a perpetuation and even strengthening of the opportunities that local banks with relationships with their depositors are offering. At the same time, I think we will see services that are provided. But among the services, because we don't let securities firms take deposits, insured deposits by the FDIC, I don't believe that we should have fintechs do that either. As much as they offer certain forms of promise, I think we risk undermining the capacity of regional and community banks with, both State and Federal charters, to provide lending opportunities in their own communities of service.

Mr. BUDD. Thank you for that. I would still want to look for opportunities for collaboration.

I want to change the question up a little bit. Ms. Hughes, this is still for you. Earlier this year, Democrats led a joint resolution to revoke the OCC's final True Lender Rule. And we think that really restricted access to affordable credit, hurt small businesses, hurt consumers, and created a lot of uncertainty in an industry that ultimately negatively impacts borrowers.

So, Ms. Hughes, how has the repeal of the True Lender Rule affected consumer choice and their access to credit?

Ms. HUGHES. Congressman, I regret to tell you that I think it is too early to answer that question. I think the prospect that there could be some shifts of not having a True Lender Rule are present. I think that the remarks that have been made about the opportunities for partnerships, because certainly fintechs can originate loans at much lower cost than banks can, but it is important to recognize that those loan originations may come with other costs to local communities.

And I know that you, among others on the panel on both sides of the aisle, are passionate about keeping local opportunities available in rural areas, in suburban areas, and in urban bank deserts, and I think that this is one of the places where we have to be especially cautious.

But, essentially, I have stopped paying attention to the True Lender Rule as it was because, until Congress reauthorizes it, it is a dead letter. I have been focused instead on how we can support the banks that still exist or that may become available in the three sets of communities that are currently experiencing the negative side of bank consolidation. And I just stopped paying attention on June 30th, when the rule was repealed.

I also would say and could provide information to you separately that there are some costs to the lenders that may be attributable, that were not necessarily described by the OCC. So, if that needs to be an offline conversation, let's have it.

Mr. BUDD. Certainly. Thank you.

In my remaining seconds, Mr. Reuter, is there anything you see driving the trend of closures and consolidation among rural community banks?

Mr. REUTER. I think rural community banks—I grew up in a town of 500 people in Wisconsin, on a dairy farm. Rural community banks are very important, and I think they are on the ground making loans, doing things. So, I think rural banking remains strong. One of the challenges will be them garnering deposits.

So, again, to the extent we allow fintechs to be able to draw deposits out of those communities without being regulated the same as banks, I think that is a threat for rural banking as we know it today.

Mr. BUDD. Thank you, sir.

And thank you, Mr. Chairman. I yield back.

Mr. FOSTER. Thank you.

The gentleman from Texas, Mr. Green, who is also the Chair of our Subcommittee on Oversight and Investigations, is now recognized for 5 minutes.

Mr. GREEN. Thank you, Mr. Chairman.

And I thank the witnesses for appearing. This is a very timely hearing.

And, Mr. Budd, I want to thank you for your advocacy, because I, too, am concerned about rural banks. I have relatives who live in rural communities.

But I am very much concerned about small banks. I have had at least two groups of persons who are trying to acquire a bank de novo, and they are having extreme difficulties with the de novo process.

I am going to agree with you, Mr. Reuter; the process has to be reformed. It is very time-consuming. Money is on the line. The paperwork is enormous. And it just seems to take too long. I am not sure how we reform it, but there is something that has to be done to let us get more banks because, looking at the intelligence that has been shared with me by staff, in 2014 and 2016, there were no de novo charters issued, zero. That is quite disturbing just to see that number, zero, for 2 years.

These fintechs don't have to comply with CRA. They don't have to have physical facilities located in communities, and they don't pay FDIC fees. So, we are making it pretty easy for them to create these deserts because they are not regulated to the same extent as banks are. I am very much concerned.

Let me ask you, Ms. Hughes, to what extent do you think fintechs are contributing to the banking deserts?

Ms. HUGHES. Congressman Green, this is a really interesting question. And I don't know that we have data, but what we do have, as many witnesses have suggested this morning, is a significant unlevel playing field.

And to the extent that we want to have banks—and banks perform many valuable functions in our economy—we need to be sure that they—I don't want to say that they are protected from competition, because that is not the right decision, but they need to not be undermined by people who can disrupt and disintermediate what we have used for all time in this country to support local economies and local economic growth.

And that is as important today, and it is more important today in certain communities, rural communities, in inner-city communities that don't have many banks, so they can't get easy loans because they don't have relationships, and even suburban communities.

I have lived in just about every one of those kinds of communities in my life, all along the northern tier, I would have to admit. My father was from Wenatchee, Washington, which is a small town; Wilmington, Indiana, is only a little bigger. My mother was originally from Donnybrook, North Dakota.

So what I think is important is that we not turn our backs on those communities. And it is not clear to me that we have sufficient incentives for fintechs to continue to help in those communities. And, if we don't have sufficient incentives for them to help in those communities, then we have to be sure that we retain robust chartered—whether Federal or State—banks available to serve those communities, who are still responsible for job growth, startups, small businesses—

Mr. GREEN. I hate to intercede, but I have to go to Mr. Reuter quickly.

Mr. Reuter, same question: To what extent are fintechs contributing to the bank deserts that we are seeing?

Mr. REUTER. I think the lack of a level playing field is absolutely contributing. We have talked about the online small lending capabilities they have where they are not regulated the same. They are taking deposits out of those communities.

When I talk to rural bankers, one of their biggest challenges is source of funding to make loans in the community. So, to the extent we let those tech companies extract deposits and not be regulated the same, that is a negative.

And, to the previous Congressman, I think the way you enhance more collaboration is you do make it a level playing field. I am not against competition. I just want to make sure that we lean into the trust that is already there in the banking system.

And I think you, as policymakers, deserve a lot of credit for that trust and resiliency. So, let's not forget the history, and let's make sure the new technology abides by the same rule.

Mr. GREEN. Mr. Chairman, I don't have my timepiece up, so I don't know how much time I have left, and I want to be respectful of you.

I am going to simply close with this: We are at a point now where African-American banks are about to become an endangered species, and we have to do something. We have to do something to protect them and to assure us an opportunity to have more. And I want to stand with those who want rural banks protected. You have a friend in Al Green.

We have to get together, Mr. Budd. Thank you, everybody.

I yield back.

Chairman PERLMUTTER. The gentleman yields back. Thank you.

The gentleman from Tennessee, Mr. Kustoff, is now recognized for 5 minutes.

Mr. KUSTOFF. Thank you, Mr. Chairman. And thank you for calling today's hearing.

Thank you also to the witnesses for being here.

Ms. Jackson, I wanted to discuss a bill, the Payment Choice Act, which is H.R. 4395. It would require retail businesses to accept cash payments and would not allow retail businesses to charge a higher price to customers paying with cash.

My question to you is, of course, there are rights to privacy when people make purchases and sales. I think that is an important part of cash. But could you talk about—you talked in your testimony, your written testimony, about cash, about the importance of cash as it relates to financial privacy. Ms. Jackson?

Ms. JACKSON. Thank you for your question.

And I am not too certain on what I—I can't recall what I wrote in my statement, but I do believe in the bank that I am working for now, we do honor the privacy. The cashless, cash for retail, for retail banking is something that I think should continue to happen. I don't want to see it go away. And I am not sure if I am answering your question correctly.

And so, we just stick by our model. We continue to do the best we can to reinvest into the community and we listen to the community. We listen to their needs.

Mr. KUSTOFF. I don't know if you know if there is any data out there, but are Americans in rural communities and more urban communities more likely to use cash than people in other areas?

Ms. JACKSON. I would probably say yes. And you are correct, I don't have the data on that, but I would probably say, yes, that would be accurate.

Mr. KUSTOFF. Thank you very much, Ms. Jackson.

Mr. Reuter, in your banking system, and you have banks all over, do you know if there is any data or can you say subjectively that people in rural areas or more urban areas are more likely, to use cash than those in other areas?

Mr. REUTER. I do not know whether there is a difference between rural and urban. I can tell you there is a difference in that minority communities and low- to moderate-income communities use more cash.

Ms. HENRY-NICKIE. Can I just offer for the record one interject here, that the 2019 FDIC survey looks at different kinds of ways that consumers are transacting in the banking system. And what is really helpful is how they unpack the use of check cashing, and bill payment services by racial and socioeconomic demographics.

If you look at those tables, you kind of get a sense that people who have disabilities, those who live in Indigenous American communities that tend to be rural, that tend to be remote and spatially isolated, overwhelmingly use these services more so than other groups.

That gives you a sense that they probably—these are stores that you need cash to transact in are likely to be the kinds of communities that need to continue to have our retail sector accept our legal tender, cash, and then think of digital payments as some sort of supplement to expanding the way that we interact and engage with these communities.

But that is a good source of data that helps you proxy which communities still rely heavily on transacting in cash.

Mr. KUSTOFF. Thank you.

Mr. Reuter, if I could, there have been several questions about the $600 IRS reporting question. I think Ranking Member Luetkemeyer and Congressman Williams asked you about that. And you talked about the—now, set aside the privacy concerns, just the administrative hurdles that that would place on your bank.

And all I know is what the news reports are. Apparently, there is some negotiation in raising that limit from $600 maybe up to $10,000. Even if that were to change, does that affect your opinion on what that does to you administratively, administering these requirements for your banks?

Mr. REUTER. No. We would still be opposed, because the effort would be the same, and all of the other issues, the privacy and security are in existence.

And I would like to connect it back to the conversation we just had on cash. I think one of the things I heard is that people like the anonymity and the privacy of cash. This goes completely counter to that line of thinking.

Mr. KUSTOFF. Thank you very much.

I yield back my time. And thank you to the witnesses.

Chairman PERLMUTTER. The gentleman yields back.

The gentleman from Illinois, Mr. Foster, who is also the Chair of our Task Force on Artificial Intelligence, is now recognized for 5 minutes. And he actually is the person who wanted to talk about the future of banking, whether or not technology was going to cause the elimination of banking or whether mergers and acquisitions are too much government burden. But I will yield to the gentleman from Illinois.

Mr. FOSTER. Thank you, Mr. Chairman, for stealing about half of my talking points for the beginning of my testimony.

Chairman PERLMUTTER. Sorry.

Mr. FOSTER. But you are actually correct. There is some of this existential banter going on between fintech at one end, and small, traditional community banks at the other. And the part of the fintech model that relies on regulatory arbitrage has very little support on either side of the aisle here. And leveling the playing field, in that sense, I think has to be one of our goals here.

But the part of the business model for fintechs that relies on the efficiencies of scale, I think we have to look at much more carefully. For example, a lot has been said about the value of small community banks in the PPP program, but there were examples of small fintechs who were able to help tens of thousands of small businesses get loans, often with 15 minutes online.

And so, there are advantages of the digital economy.

Professor Hughes, you mentioned a couple of questions back, that if a fintech was capable of originating a lower-cost loan, that would be detrimental to the communities they serve. Could you go a little deeper into that, because it sort of confused me? How would a community be hurt by having an option of getting a lower-cost loan online?

Ms. HUGHES. I don't know that we are thinking necessarily about that, Congressman Foster. What I intended was to suggest that the origination piece of how fintechs work is a model that is very attractive.

It may be because they do not have all of the regulatory requirements that are on banks, so they can perhaps originate loans faster and for less money.

The problem is that, if you want banks to be in business—and I am not opposed to fintechs by any means, this is a real struggle—banks have to make money. And one of the ways banks make money is through loans. They don't make money—they make money on fees, but they also make money on loans.

The loan balance comes back into the bank, and because of fractional reserve requirements, the loan can be recycled into the community. So, a small amount can become $5,000 of new money in the community in a very short period of time.

That is not necessarily going to happen if fintechs take over more of the lending, unless they are working in partnership with banks that would otherwise be doing the same.

But we want to be sure they are not subject to fractional reserve banking. They are subject to corporate level if they are corporations, corporate level capital requirements that are very different.

So, we don't get the synergy from lending that we get from lending under the fractional reserve requirement system that we have been using in this country for many years and that banks are observing.

Mr. FOSTER. Right. I understand. And that is exactly an example of the sort of regulatory arbitrage advantage that the fintechs may have.

Now, The Wall Street Journal was running a series of articles about the stress of rural banks, I don't know, probably about a year ago. They ran a series of very interesting articles, and they have examples, for example, of small rural banks that didn't want to continue in the small town they lived in, so they moved, and established a secondary branch in the nearest big city, and were holding onto the rural things just to extract deposits.

Because frankly, the bind they were in is that there are no profitable business investments in small, dying rural towns, to put it bluntly.

And so, they didn't see a future there, and they were actually extracting—even though these were traditional community banks, they ended up extracting deposits and then investing them at best in the nearest big city.

How do we deal with that trend, or is that just part of the free market decision-making of banks? Does anyone want to respond to that? It is something I have struggled with—I have represented very rural areas, and I am trying to figure out what to do with that sort of dynamic. It has been a struggle with which I have dealt. Does anyone have any ideas how to—yes?

Ms. HENRY-NICKIE. I think there is no relationship between labeling a bank, the size of a bank, and the risk the bank poses to a community. Community banks are just as well-positioned as a Wells Fargo to extract wealth out of any community, and we need to think about ways to empower them, I think, to work with collaborative partners like community development financial institutions (CDFIs) to reintroduce cash-to-credit programs that help to repurpose the deposits that they control and invest it in low-cost, responsible credit products, particularly for small businesses.

I would like to dismiss the notion that community banks, because they are community banks, do better in lower-risk work than other kinds of financial intermediaries. We need to think holistically about all of the systems, all of the loan products that are present in the community, and ways to encourage that legislatively as well as regulatorily.

Mr. FOSTER. Thank you. And—

Ms. GONZALEZ-BRITO. Can I just add something, Mr. Chairman?

Mr. FOSTER. Yes.

Ms. GONZALEZ-BRITO. Just in terms of rural communities, in California, our members are really concerned about the closure of branches and the impacts that has, for instance, on reinvestment back into those communities.

So, it is really important that CRA require of banking institutions, a CRA investment back into communities, effectively those that are underserved like rural communities.

I would add that broadband and the digital divide in these communities is great because of the lack of infrastructure. So, banking can help with that as well in terms of investing in broadband and the infrastructure in those communities.

Mr. FOSTER. Okay. I am afraid the chairman has his finger on the gavel here, so I am out of time.

Chairman PERLMUTTER. Yes. The gentleman's time has expired. I gave him—I have given everybody a little extra time. I gave him more, since this hearing was his idea.

I now yield to the gentleman from Tennessee, Mr. Rose, for 5 minutes.

Mr. ROSE. Chairman Perlmutter and Ranking Member Luetkemeyer, thank you for holding this hearing, and thank you to our witnesses for providing your expertise and your time today.

I think that, as we work to shape the banking system of the future, we must look to innovation but also aim to implement a regulatory framework that allows banks of all sizes—of all sizes—to be successful.

As a former community bank board member, I have seen and witnessed firsthand how the crush of regulation deters particularly our smaller banks from being able to succeed and thrive, and particularly to thrive in rural communities, as we have heard many of my colleagues say today.

Between 2008 and 2020, over 13,000 bank branches closed in the U.S.—we have heard that data today—representing 14 percent of all branches.

Many communities report that, following a bank closure—and I have witnessed this firsthand—they also lose financial and community resources, including financial advisers and civil leadership. Sometimes, it is simple as the tee ball teams in your community not being able to find the resources to succeed.

These losses leave communities with unanswered questions, instability, and less access to services. And, again, in the rural community, where my own farm is, I have witnessed this firsthand.

Mr. Reuter, what factors do you see driving the trend of closures and consolidation among community banks?

Mr. REUTER. I think you touched on one in your opening statement, Congressman, and that is the regulatory burden. We really need to look at tailoring so that it is lighter for a bank that is less complicated.

What we operate at FirstBank, where we don't offer insurance or wealth management and other services, is much simpler. So, from a regulatory standpoint, it should have less regulatory burden.

Also, I think the fintech, the level playing field, one of the benefits of doing that is, you get rid of the negative arbitrage that is there so that capital flows back into the banking industry and partnerships do form between tech companies and banks. And that also then, to me, leverages the trust and resiliency of the industry.

So, I think those things would make a big difference in what is happening in rural markets.

Mr. ROSE. Thank you, and I certainly agree, as I have already said, about the regulatory framework. I think it is noteworthy that, when we implement huge regulatory expansions, that maybe in the eyes of folks sitting on high in Washington seem reasonable, when they make their way down to our local communities, they have a crushing impact on both the sustenance of our local small community banks and very much on new ones starting.

Professor Hughes, what can we do in Congress to ensure the regulatory environment allows community banks to keep their doors open?

Ms. HUGHES. I think we have been talking about it all morning in terms of retaining the robustness of community banks, possibly by tailoring some of the requirements that they are operating under, that, as Mr. Reuter has suggested, are really designed to protect mostly the Deposit Insurance Fund from excessive risk-taking, which crops up every once in a while in every form of business. So, it is not unique to one.

What I think we have, though, is a real crisis in bank deserts, and that, while we would like to think that there might be other models, like fintechs, that would address those, in some of those communities, the presence of a community bank that depends on relationships is going to be even more important going forward in helping small businesses and consumers get start-up money that they can't get from capital markets because they are too small, and getting loans to acquire business locations and things of the like that are important to building communities.

So, unless we want to see a lot of desert ghost towns around the United States, we have to do what we can to lighten the load on community banks so that they can continue to be there because we do still have very valuable parts of our economy emanating from smaller communities, not tiny towns, but they are important.

But we are seeing lots of startups in towns like Bloomington, Indiana, towns close to universities, and we need to be sure that there are adequate banking services on a relationship level, to protect the robustness of the economies in those communities on which we all actually depend.

Mr. ROSE. Thank you, Professor Hughes.

I am pleased—and I might indulge the Chair for a few extra moments—to see that the Payment Choice Act is attached to this hearing. As an original cosponsor, I hope to see this legislation included in our next markup.

Throughout the pandemic, we faced not only a coin shortage, but businesses were refusing to accept cash as a form of payment at an alarming rate, leaving many consumers unable to purchase necessities.

Cashless policies disproportionately harm seniors, minorities, immigrants, low-income populations, and working-class communities such as exist across the Sixth District of Tennessee.

Consumers want the freedom to conduct transactions in a way that works best for them. Of the 80 percent of non-bill payments made in person in 2020, cash was used for 28 percent of these transactions, despite the pandemic-driven shift in shopping behaviors.

I believe that all consumers should have the freedom to choose to pay with cash at grocery stores, restaurants, businesses, or anywhere they choose.

And I might conclude just by saying that, if we see some of the heightened regulation about reporting by financial institutions, I think we will see more consumers, particularly in places like the district that I represent, closing their bank accounts, and going purely to cash.

Thank you for your indulgence. I yield back.

Chairman PERLMUTTER. The gentleman yields back.

You can all see my chairing style is to kind of allow people to keep going.

Mr. Lawson, the gentleman from Florida, is now recognized for 5 minutes.

Mr. LAWSON. Thank you, Mr. Chairman, and Ranking Member Luetkemeyer, for hosting this hearing. This is a very, very important hearing that we are having today, and I want to thank all of the panelists for being here.

There has been a considerable amount of discussion about banking deserts, almost like food deserts. And I know that between 2008 and 2016, about 25 percent of the banks and so forth have closed in rural areas which affect majority and minority during the Census tract.

My question, to everyone is—because I don't see that there were any clear, distinct answers this morning, and maybe there are not any right now—since we are seeing this increase in the amount of bank deserts, what are the long-term consequences in majority and minority communities, regarding the economic opportunity and access to credit?

What does this current trend in banking mean to low-income communities as we enter the economic recovery period of COVID-19?

And this is open to the whole panel, because I guess it is something that we have to deal with, but I know there have been more and more.

And then, there is some criticism about all of these options that low-income individuals have to go to different areas to get access to capital, their payday loans, and everything else. And people say we don't need them, but what is going to happen? Can you give us any idea of what the future is going to be for our rural communities?

I represent quite a few rural communities myself, always have, and I see this trend all over the place, and I just wanted to get each one of your perspectives on where we are going from here, because of what has happened in the last couple of years.

Ms. GONZALEZ-BRITO. Congressman, in terms of the long-term consequences for rural banking closures, I would say we saw that with bank PPP loans; half of the PPP loans that banks made were with branches within 2 miles of the borrower. So, if we don't have a bank branch, those relationships are not there, and we saw it very clearly during COVID.

I would say that also when we talk about regulatory burden for banks, we really need to center the burden of communities of not having banking. We need to remember that these banks are profit-driven, and we need to be able to think about alternatives to serve communities that have never been served by the market.

And that could include postal banking and public banking, and mission-driven banking, which takes the profit-driven motive to close branches out of the picture. Thank you.

Mr. LAWSON. Would anyone else like to respond?

Ms. JACKSON. I would like to add to that.

I do agree with—the Beneficial State Bank is a mission-driven bank, just as the other panelists were saying, and I think just the fact that we always reinvest into our community is very important, it is very beneficial, and I think that will help out in some way if other banks can adopt our model that we are doing.

Ms. HENRY-NICKIE. I would just add to these comments that banking deserts are a consequence of decisions, of banks saying that these markets are no longer valuable to me.

To fill that gap, just like fintechs have done since the great financial subprime crisis, we need gap fillers to now come in and see the opportunities in this market.

And to do that, we need to really lean in on encouraging de novo bank charters. Black-owned banks see the value in Black communities. Minority depository institutions have always seen the value in our communities.

We need to encourage their growth, encourage them to hold on, as opposed to just sitting by as passive bystanders and letting them whittle away. We are 50 percent fewer in MDIs than we were in 2007.

So, how do we replace the gap? By encouraging new physical branches and banks to grow in these communities, and whatever kinds of subsidies we can corral—because we can corral them—to facilitate and subsidize their growth, that should be our mission.

Mr. REUTER. And, Congressman Lawson, I share your concern. I think it is a challenging issue because one of the drivers for branch closures—and I would like to point out, branch closing, we talked about it earlier, we have 50 percent of the banks we had at one time.

And, if you look, it is universal across all neighborhoods that there is a reduction in branches. And it is really because of how people are using their bank. Half of our deposits are now made with someone taking a picture of their check.

And so, in order for us to adapt and make the technology investments, we have to look at how customers are choosing to do business.

But I will tell you that we are mission-driven as a community bank, because we only grow if we are serving the community that we are part of. And so, I share the sentiments of others.

I don't support postal bankingz, because it is already a struggling entity for the same reasons that we are talking today. Technology has changed its business model. So, to layer another industry that is being attacked by technology on top of that, I am not sure that is a good doubling down on the U.S. Postal Service.

Mr. LAWSON. Mr. Chairman, thanks for letting me go over.

With that, I will yield back. This is a topic that we need to bring up again.

Chairman PERLMUTTER. If I didn't let you go over, I would have been in real trouble, since I let everybody else go over.

The gentleman from Illinois, Mr. Casten, who is also the Vice Chair of our Subcommittee on Investor Protection, Entrepreneurship, and Capital Markets, is now recognized for 5 minutes.

Mr. CASTEN. Thank you, Mr. Chairman.

I feel like I am under a lot of obligation to try to make up all the time you have allowed us to all go over, but I will do my best.

Mr. Reuter, I want to start with you, and I just want to give you an opportunity. We talked a lot about the decline in small, local bank branches and the rise in fintechs and, in particular, given a lot of those fintechs are not regulated under the Bank Holding Company Act.

Are there any concerns you have with fintechs' ability to serve the underbanked so long as they remain not subject to the Banking Holding Company Act, that you haven't already covered? And I just want to give you a chance. I know we have corners of that so far. Is there anything else you would like to add to that?

Mr. REUTER. Thank you, Congressman Casten. I do have concerns. One of the concerns I have, we talked a little bit about, with the ILC charter. While I think it is well-designed for the purpose originally intended, you are seeing some of these fintechs and technology companies wanting to creatively get that charter to get access to the payment system.

They want that, because they want the data. Where do you buy? How do you spend your money? Because they want to use that data in the advertising side of their business.

So, if you think about it, their motives are very different. As a bank, we have always been in the trust business. I know everything about our customers based on their account information. It is part of why I am nervous about shipping all of it to the IRS.

The difference is that banks make their money by taking in deposits and making loans. Their core business is not data, like many of these tech companies.

Our fiduciary responsibility is different, and our motive is different, and our behavior has been different. So, yes, I have a big concern about turning over the banking industry to some of these technology companies.

Mr. CASTEN. I am glad you raised the industrial loan corporations, because you have sailed directly into my second question for Ms. Gonzalez-Brito.

Ms. Gonzalez-Brito, you talked with Mr. Meeks about some of the CRA issues that come into play with fintechs. Can you talk about what CRA issues or concerns you may have if a fintech is registered as an ILC and uses that to enter the banking system?

Are they subject to the same rules as other players in the banking sector?

Ms. GONZALEZ-BRITO. This is a great question. No, they are not, and they often use these charters to be able to evade local State protections that they have in relation to, for instance, interest rate caps.

So, I find myself agreeing with Mr. Reuter on the importance of regulatory rules being equal across the playing field.

And I am going to sound like a broken record, but these ILCs that are forming in other parts—or any part of the country, are not subject to CRA. And we need those fintechs, if they are taking deposits, if they are making loans in our communities, which they are, to have a CRA requirement.

And then, lastly, I would just say that fair lending algorithms are being used that we don't understand, and sometimes, the CEOs don't even understand.

So, it is incredibly important that we have regulatory oversight, especially on fair lending and fair housing.

Mr. CASTEN. Thank you.

And, with the time I have left, I want to pivot a little bit away from fintechs, because these things are overlaid.

But a number of the crypto-based companies like Paxos and Anchorage and Protego have been asking for, and receiving, Federal trust charters from the OCC. And we are creating this sort of blurry area between fintech and crypto.

Dr. Henry-Nickie, with my remaining time, I welcome your thoughts on what factors we should be taking into account reviewing bank charters from crypto companies, and, in particular, with a real focus on the volatility.

We are essentially giving, as I think of it, 4X risk on deposits. What is the right way for us to be thinking about those charters and, in particular, with respect to the volatility exposure that this might place on depositors?

Ms. HENRY-NICKIE. Thanks for the question, Congressman Casten. While I think it is a really important issue, I, too, am concerned about how these cryptocurrencies are playing inside our economy without figuring out how to manage the volatility and the vulnerability.

I don't follow these issues as a scholar, and I think perhaps Ms. Hughes might be better-positioned to render an opinion on the subject.

Mr. CASTEN. Okay.

Ms. Hughes, we seem to always curse you with 30 seconds to answer a 10-minute question, but I will give you your best shot.

Ms. HUGHES. I will be happy to answer it separately, Congressman, so we can have that conversation.

The rigorous evaluation of anybody who gets a Federal trust charter, or from the States that are offering charters, is still present, and I do not think that these companies are getting less rigorous reviews when they are getting these permissions.

But one of the differences is the scope of the operational powers that they have, and when the States have been offering opportunities to these businesses, they have been cabined in certain fields that are not necessarily going to be in direct competition with the kinds of banks, the community banks, that we have been talking about so much today.

I have the same problem. This is a long answer. We need to have a separate conversation about it. And I do think that we have different management issues—different risk-management issues with cryptocurrency because of price volatility than we have with traditional banks and even with some of the larger fintechs, including some that are now acquiring.

Mr. CASTEN. Okay. Thank you, and notwithstanding my initial promise, it looks like our chairman is going to be managing penalty time at the end of this hearing. But I appreciate you all, and I yield back my penalty time.

Chairman PERLMUTTER. The gentleman yields back.

We will go now to the gentlewoman from Massachusetts, Ms. Pressley, the Vice Chair of this subcommittee. She is recognized for 5 minutes.

Then we will go to Mr. Emmer, and then, we will go to Mr. Garcia to close out.

Ms. Pressley?

Ms. PRESSLEY. Thank you, Chairman Perlmutter, for convening this hearing. I, along with many of my colleagues, have been sounding the alarm for many years about rising bank branch closures in predominantly Black and Brown communities, and the negative impact that this will have on small businesses owned by people of color. That impact was certainly made abundantly clear during the pandemic.

Congress created the Paycheck Protection Program to serve as a lifeline to small businesses and their employees, but we now know proximity to banks played a significant role in who actually received funds. Half of bank PPP loans came from banks with branches within 2 miles of the borrower. Borrowers using a nearby bank received credit sooner, which was a critical advantage, as PPP money ran out rapidly.

It is no surprise, but egregious nonetheless, that Black-owned businesses received only 2 percent of PPP loans from the CARES Act. According to the Boston Federal Reserve, one in five Black-owned small businesses had never even heard of the program.

Ms. Gonzalez-Brito, nearly half of Black-owned businesses were wiped out in the early months of the pandemic. Can you briefly summarize the long-term impact these business closures will have on Black and Brown communities?

Ms. GONZALEZ-BRITO. Thank you for that question. You are absolutely right; there was a disparate impact in terms of the way PPP loans were administered.

And, if you think about the banks in communities of color, counties that are majority Black and Brown have about 27 financial institutions per 100 people. For Indigenous Native-American communities, it is even less. And for the White communities that are majority White, we have over 40 branches.

So, when we close branches in these communities, small businesses really suffer. We know that they need local banks to be able to really have this relationship that they trust and to be able to get the kind of support that they need, especially in a financial crisis.

Ms. PRESSLEY. Thank you. So, the closure of branches and consolidation of banks limits opportunities for Black-owned small businesses and, as a result, our broader communities.

It is critical that Black and Brown voices are heard during the bank merger process and that Congress pursues every solution to close these gaps, including public banking and postal banking.

Democrats control the House, the Senate, and the White House, and together we have made strides to exact economic justice in our pandemic recovery efforts.

But, from the priority application period for minority-owned restaurants under the Restaurant Revitalization Fund, to the USDA loans for Black farmers, right-wing, private-interest groups have claimed reverse discrimination in the courts and blocked these overdue investments.

Ms. Gonzalez-Brito, the Freedman's Savings Bank was created by Congress in 1865 to offer banking to newly-freed Black Americans. Can you please briefly summarize what happened to the Freedman's Bank and the millions of dollars that Black Americans deposited into it?

Ms. GONZALEZ-BRITO. The Freedman's Bank is a good example of the way that wealth is extracted from Black Americans. And, unfortunately, when that bank was created, the mission and what it was created for was absolutely noble, but all of the trustees that were running that bank were White, they did not know the community, and not only did they not know, we are talking about a whole different timeframe in terms of White people in this country and the enslavement of Black Americans.

And so, it is really important that as we think about the impact that this has, where the banks are actually run by people of color, that we have minority deposit institutions that are run by people of color, and that we support them with as much community support and government support that we can—

Ms. PRESSLEY. Thank you.

Ms. GONZALEZ-BRITO. —in order to better serve the communities.

Ms. PRESSLEY. Thank you very much. And this is important history, which I think many are unaware of, and it just goes to show that there has been precise legislative harm done. From the Freedman's Bank to redlining to exclusion from the GI Bill and the Social Security Act, Black and Brown workers have been pushed out of our economic and financial systems for really far too long.

So, race-conscious relief is necessary because the heart and harm was precise and race conscious. So, race-conscious relief is not discrimination; it is justice. It is a necessary step toward equality and liberation.

Thank you, and I yield back.

Ms. GONZALEZ-BRITO. Can I add one more thing? In terms of race-conscious initiatives, the special purpose credit program is one that banks really should be implementing. And we have been able to successfully work with some banks in California to be able to do that.

It really focuses credit products on those communities that have been not only excluded but, as we talked about, had their wealth extracted from them. And so, we encourage banks to look at these kinds of programs, and we look forward to working with them to do that.

Ms. PRESSLEY. Thank you.

Chairman PERLMUTTER. The gentlelady yields back.

The gentleman from Minnesota, Mr. Emmer, is recognized for 5 minutes.

Mr. EMMER. Thank you, Chairman Perlmutter.

Before I begin my remarks, I also want to thank Mr. Luetkemeyer and Mr. Reuter for bringing up the compliance and privacy concerns of requiring financial institutions to report transactional data to the IRS on all accounts with $600 or more.

I led a letter with 141 of my colleagues on this issue, and we are watching it very closely.

As we convene today to discuss modernizing financial services institutions, I implore my colleagues to think outside the box on how Congress can assist in improving the manner in which consumers access financial products and services, because that is what we are here for today.

Congressman Perlmutter, I would like to recognize you for a moment for your work as the co-lead on our bill, the Credit Union Governance Modernization Act, a bill that thoughtfully revisits antiquated regulations that prevent credit unions from doing what they need to do: serve their communities.

I am happy to see that this bill is noticed in this hearing, because it revises the procedure for expelling members from a Federal credit union to make it safer for the members and employees. It is imperative that we consider this bipartisan legislation in this committee.

Financial institutions have the important responsibility of providing safe, reliable financial services for Americans across the country. But what happens when a credit union member makes threats of violence to other members or the credit union's employees? What happens when a credit union member repeatedly deposits fraudulent checks and jeopardizes the stability of their credit union? What happens when a member damages credit union property and places other members and employees in harm's way?

Right now, due to the antiquated regulations that exist, it would be hard to remove members who make credit unions unsafe. My bill revises these regulations and crafts a process with an emphasis on due process and respect for members' ownership in the credit union to remove dangerous members so that credit unions can best carry out their obligation, again, to provide safe and reliable financial services for Americans.

We really have to move banking into the future. And I guess with that, Ms. Hughes, if you don't mind—thank you, by the way, to all of the witnesses for being here today and for your time and participation and your expertise.

Ms. Hughes, I want to direct this to you. Given the issues I just addressed, do you believe there is cause for a legislative solution, like the Credit Union Governance Modernization Act, to ensure credit unions' safety as credit unions provide financial services to their communities?

Ms. HUGHES. Congressman Emmer, I have to apologize and tell you that I have not read that bill, so I am not going to be able to comment about it very specifically.

But I would say that the credit unions are a little bit different, but the idea that banks and credit unions cannot protect themselves from dangerous members is just appalling.

The question then is, how do you establish parameters—if you want to legislate this—that will not have an unduly adverse effect on small businesses that have licenses from the States and the communities that are a part of the fabric on Main Street in many communities? How will we fashion this?

And so, that is why I need to read the bill, and perhaps we can have an offline conversation about the bill if you remain interested in my views about it.

Mr. EMMER. Just so everybody on this panel knows—because I know there has been a lot of techie stuff talked about, and this is kind of more like meat-and-potatoes stuff—the antiquated rules, as Chairman Perlmutter will tell you, and I am going to do this right now if I can do this in a streamlined fashion, would require a vote of the entire membership to deal with a member who is making violent threats against other members and/or credit union employees, who is threatening damage or committing damage to credit union property.

This seems to be an antiquated way and, frankly, very difficult way to expel a member who is presenting these dangers to credit union employees and their customers.

So, what this bill does is it streamlines that process while protecting the due process concerns so that they can make a quick decision under the right circumstances and make sure that everybody is safe and the credit union is protected.

So, I do hope you have a chance to read it. I think you will be supportive of what we are doing.

And, again, Chairman Perlmutter, I thank you for your work with us on this bill, and thank you for the time today. I yield back.

Ms. GONZALEZ-BRITO. Chairman Perlmutter?

Chairman PERLMUTTER. The gentleman yields back. I have read your bill, and it is meritorious, and it should be passed. That is my opinion.

Mr. EMMER. Well, then it is done. Thank you.

Chairman PERLMUTTER. Our final panelist is Mr. Garcia from Illinois, and he is now recognized for 5 minutes.

Mr. GARCIA OF ILLINOIS. Thank you, Chairman Perlmutter, and, of course, thank you to the ranking member for convening this important hearing.

This hearing is called the, "Future of Banking," but it is not just about CEOs and Wall Street. The future of banking is about the future of working-class neighborhoods like the ones I represent.

My neighbors lost their homes in the Great Recession. Many lost small businesses during the COVID-19 pandemic. This isn't inevitable. Congress can create and enable a more equitable financial system.

So today, I am introducing the Bank Merger Review Modernization Act, to strengthen oversight of bank mergers so our regulators aren't just a rubber stamp for creating mega banks.

And soon, I will introduce the Close the ILC Loophole Act, to address the huge threat that the underregulated banks can pose to our markets and our financial systems.

I would like to begin with a question for Ms. Gonzalez-Brito. Yesterday, the Committee for Better Banks reported that BB&T and SunTrust merged. Their new combined bank, Truist, not only fell short of the CEO's promise to Congress to open 15 bank branches in low- to moderate-income areas, the merger slowed down the pace of opening bank branches in lower-income areas and increased the pace of bank branches in higher-income areas.

Banks can be hard to come by in my neighborhood, and that means my constituents often need to turn to riskier loans.

Ms. Gonzalez-Brito, it looks like these mergers have reduced access to financial services for the people who need it most.

Does this new report square with your own work? Do bank mergers tend to limit access to capital for working-class people, and who is hurt when regulators serve as rubber stamps for bank mergers?

Ms. GONZALEZ-BRITO. Thank you so much. This is a really important question, and it also goes back to Congresswoman Pressley's statement about making sure that community voices in the most impacted communities, Black and Brown communities, are at the center of any discussions around mergers and acquisitions.

We are seeing that mergers and acquisitions are leading to not only a closure of bank branches, but they are also leading to less reinvestment, because where you had two banks prior to the merger reinvesting back into communities, you now have only one. And one plus one also doesn't equal two; it equals less than two.

So what we really need is to ensure that any merger, before it is approved, has a public benefit and does not have a public harm.

And I really want to thank you for your work on the Bank Merger Review Modernization Act. It is exactly what we need.

I would just add—I want to go back to the credit union discussion, because I was surprised it took us this long to get there. But credit unions are not subject to the Community Reinvestment Act, and so we actually don't know how much they are reinvesting back into communities, and that is critical for low-income communities and communities of color.

And I would say in relation to, I am not sure where this conversation went in terms of violence, but really what credit unions should be concerned about and what we are concerned about is that their membership actually doesn't represent the communities that they are in. And that is critical for a successful community and economic development and community development.

Mr. GARCIA OF ILLINOIS. Thank you for that.

Dr. Henry-Nickie, last year, the FDIC approved deposit insurance applications for two new ILCs, the first in many years. Of course, a lot has changed since the last ILCs were approved.

In 2005, Walmart's ILC application sparked fears about anti-competitive practices and the potential for financial risk of large commercial ILCs.

And now, in the new world of Amazon, Facebook, and Google, it seems to me that the potential for corporate monopoly and abuse is greater than ever.

Do you think that granting ILC charters to Big Tech or large commercial firms could threaten competitive markets, consumer privacy, or financial stability?

Ms. HENRY-NICKIE. Thank you for the question, and also for your work in bringing this incredible piece of legislation to the House Floor. I think you are right in calling out the scariness that involves putting these massive firms that are really good at sort of killing competition and monopolizing the entire landscape.

I would be tremendously concerned about those kinds of firms getting access to ILC charters, but I just want to go back a little to the question around race-conscious policies.

In this legislation, giving the CFPB a vote to stop these kinds of—a scaling of bad bank practices is actually really important to maintaining our hold for communities of color on the bank branches that are remaining. And also, it is a really impactful way to generate new bank branches.

Part of the consumer restitution work that the CFPB does is to legislate where that presence should be reinstated to help rehabilitate the damage and disinvestment that is done to consumers.

So, thank you again for the incredible work. I really want this piece of legislation to advance and to pass because the CFPB can do a fantastic job of holding institutions accountable and stopping the spread of banking deserts through branch losses.

Mr. GARCIA OF ILLINOIS. Thank you so much.

And thank you, Mr. Chairman, for your indulgence.

Chairman PERLMUTTER. You're welcome. The gentleman yields back.

Without objection, statements will be entered into the record on behalf of the following Members of Congress and organizations: the Honorable Donald M. Payne, Jr.; the American Financial Services Association; the Bank Policy Institute; the Credit Union National Association; the Electronic Transactions Association; the Financial Data and Technology Association; the Independent Community Bankers of America; the National Armored Car Association; and the National Association of Federally-Insured Credit Unions.

I would like to thank our witnesses for your testimony today. Thank you for allowing me to be lenient with the Members in allowing their time to kind of run over. We appreciate the time that you have extended to us, and your expertise and your testimony today.

The Chair notes that some Members may have additional questions for these witnesses, which they may wish to submit in writing. Without objection, the hearing record will remain open for 5 legislative days for Members to submit written questions to these witnesses and to place their responses in the record. Also, without objection, Members will have 5 legislative days to submit extraneous materials to the Chair for inclusion in the record.

Thank you very much. Thanks for your testimony.

This hearing is now adjourned.

[Whereupon, at 12:44 p.m., the hearing was adjourned.]

A P P E N D I X

September 29, 2021

Opening Statement: "The Future of Banking: How Consolidation, Nonbank Competition, and Technology are Reshaping the Banking System"

Ranking Member McHenry

Date: September 29, 2021

Time: 1 min.

Thank you.

The Future of Banking. That's a good topic, one I would love to have a real discussion on. However, that won't happen today.

To be clear, Republicans continue to support regulatory rightsizing.

Republicans support finding new ways financial technology can reach more communities, businesses, and the underbanked.

Republicans want greater innovation and ways to make banking practices safer and easier for all Americans.

But that's not what we will discuss today. Democrats want more regulations on banks.

Case in point, Democrats revoked the true lender rule this summer, making it more difficult for bank partnerships to reach those who want different banking options.

And just last week President Biden nominated an OCC candidate who wants to quote "end banking as we know it," end quote.

Under Democrats' one party rule the future of banking looks pretty bleak.

I yield back.

California Reinvestment Coalition

Testimony of Paulina Gonzalez-Brito (They/Them)

Before the U.S. House Financial calls Committee Subcommittee on Consumer Protection and Financial Institutions

The Future of Banking: How Consolidation, Nonbank Competition, and Technology are Reshaping the Banking System

September 29, 2021

Introduction

Good morning, my name is Paulina Gonzalez-Brito. I'm the Executive Director of the California Reinvestment Coalition. I am Purepecha, Chicane, my people come from the original people of Michoacan and Zacatecas, Mexico and I recently came out as non-binary. I go by the pronouns they/them. My grandfather repatriated to the US after being deported from Arizona, even as a US citizen in the 1930s. He was then lucky enough to buy a home in South East Los Angeles, only after my mother and my aunts and uncles were old enough to work and help pay the down payment and mortgage. The neighborhood where he bought the house was designated in the HUD redlining maps as yellow. The legend on the map described this yellow area as "under threat of infiltration by Mexicans." We were the Mexicans they were worried about.

My history is what has brought me to the California Reinvestment Coalition (CRC). CRC builds an inclusive and fair economy that meets the needs of communities of color and low-income communities by ensuring that banks and other corporations invest and conduct business in our communities in a just and equitable manner. We envision a future in which people of color and low-income people live and participate fully and equally in financially healthy and stable communities without fear or displacement, and have the tools necessary to build household and community wealth.

We have hundreds of nonprofit organizational members of our coalition throughout the state who work in neighborhoods as financial first responders, providing services, stabilizing and building up communities, and working to close the racial wealth gap and to challenge the banking system That has been marked by historic discrimination, exclusion and extraction of Black, Indigenous, and People of Color (BIPOC) communities. CRC's members across the state, all work in low income communities and communities of color, they include CDFIs, Community Development Corporations, affordable housing developers and community land trusts, fair lending agencies, small business technical assistance providers, legal aid and tenant rights organizations, and financial and homebuyer counselors. Together with our members we work to close the racial wealth gap by ensuring that banks and other corporations invest and conduct business in our community in an equitable manner and do no harm.

In my testimony today, I will be focused on the rapid expansion of fintech and bank consolidation. Without proper monitoring, evaluation, and enforcement, both bank consolidation and fintech will contribute to the widening of the racial wealth gap. While financial actors profit and promise increasingly “color-blind” access to credit, in reality, we’re seeing less reinvestment in communities, closure of bank branches en masse, sky high loan denials and soaring fees, as well as continued discrimination. The only antidote to these concerning trends is greater attention to BIPOC and consumer voices; There also needs to be greater access to both fairly priced credit and broadband Internet to enable full participation in the digital economy by BIPOC and low income people. But to stop there would be a disservice to these communities. We’ll also need greater coordinated regulatory responses to fintech expansion and algorithms; greater enforcement of consumer protection, fair lending, fair housing and reinvestment laws; new models of public banking and community ownership; and corporate reparations for past harm to Black, Indigenous, People of Color communities.

American Banks: From Slavery to Redlining

Banks financed the trade of enslaved people and they also allowed white Southerners to use enslaved people as collateral, thus enriching themselves and slave owners in the process. The Freedman’s Bank was created by Congress in 1865, in an attempt to offer banking to newly freed Black Americans. Black Americans deposited millions of dollars into this bank, which they subsequently lost after corruption and mismanagement by its white trustees. The bank not only stole millions from Black workers and families, it also used their deposits to support mortgages and small business loans to mostly white people. The Freedman’s Bank, created for the benefit of freed slaves, was being used to advance white economic development.[1]

Centuries of extraction from and exclusion of BIPOC communities has marred the US banking system. Combined, these two practices have subsequently led to a fundamental failure to adequately and fairly service these communities. This failure is not an accident. It is a deliberate structural and systemic design baked in white supremacy and fully backed by the US government. Through housing, lending, and financial product policies[2]— bolstered by practices of exclusion, anti-Black ideology, and extraction from Black people first and foremost and People of Color generally — the US has profited from our labor while denying us wealth.

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[1] https://www.chicagoreporter.com/black-americas-distrust-of-banks-rooted-in-reconstruction/

[2] See for example, Richard Rothstein, “The Color of Law: A Forgotten History of How Our Government Segregate America,” Liveright Publishing Corporation, 2017.

Federal law prohibits home lending discrimination. The Fair Housing Act protects people from discrimination when they are renting or buying a home, applying for a mortgage, seeking housing assistance, or engaging in other housing-related activities.[3] The Community Reinvestment Act (CRA), enacted in 1977, encourages financial institutions to help meet the credit needs of the communities in which they do business.[4] Other federal laws, such as the Equal Credit Opportunity Act, as well as certain state laws, are meant to further prevent discrimination in the origination, denial and terms and conditions of loans based on race and ethnicity.

So is discrimination over? Far from it. We now have a financial system that hides discrimination behind denials of credit. It's modern day redlining. A 2021 investigation by The Markup found that lenders in 2019 were more likely to deny home loans to people of color than to white people with similar financial characteristics — even when it controlled for newly available financial factors the mortgage industry for years has said would explain racial disparities in lending.[5] A study conducted by investigative news outlet Reveal showed that Black applicants were turned away for mortgage loans at significantly higher rates than whites in 48 cities, Latines[6] in 25 cities, Asian-Americans in nine and Native Americans in three . The study controlled for all economic and social factors including income and loan amount but did not include credit scores.[7] In both studies, credit scores were not taken into account by the study because they are not publicly available. Banks often use differences in income and credit scores as a rationale to justify disparities. Both studies showed that even when accounting for most of these factors, BIPOC borrowers fared worse. Regardless, wealth and income disparities, which impact credit scores, are not happenstance. Disparities in wealth by race and ethnicity are stark and point to their origins in historical policies and practices.

It is these practices (e.g. redlining, income suppression, denial of land purchases etc) that results in what the most recent data from the Federal Reserve Consumer Data Survey shows: White families have a median household wealth of $184,000, whereas Black families have $23,000 and Latine families have $38,000. The Federal Reserve recognizes that this disparity for Black families has resulted from historical barriers that include the Homestead Act, the Social Security Act of 1935, the GI Bill of 1944, redlining, and discrimination in the criminal justice system.[8] The Social Security Act, as an example, excluded domestic workers and farmworkers; these jobs were often held by Black men and women. The Social Security Act, like the National Labor Relations Act, still excludes domestic workers and farmworkers, continuing the exclusion of many Black and Latine women and men.

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[3] https://www.hud.gov/program_offices/fair_housing_equal_opp/fair_housing_act_overview
[4] https://www.federalreserve.gov/consumerscommunities/cra_about.htm
[5] https://themarkup.org/denied/2021/08/25/the-secret-bias-hidden-in-mortgage-approval-algorithms
[6] "Latine (pronounced la·ˈti·ne) is a gender-neutral form of the word Latino, created by LGBTQIA+, gender non-binary, and feminist communities in Spanish speaking countries. The objective of the term Latine is to remove gender from the Spanish word Latino, by replacing it with the gender-neutral Spanish letter E. This idea is native to the Spanish language and can be seen in many gender-neutral words like "estudiante". https://latv.com/latine-vs-latinx
[7] https://revealnews.org/article/for-people-of-color-banks-are-shutting-the-door-to-homeownership/
[8] https://www.stlouisfed.org/on-the-economy/2021/january/wealth-gaps-white-black-hispanic-families-2019

Recommendation: It is this historical harm that requires a response of reparations, community led reinvestment, and strict regulation and enforcement to make sure that financial institutions abide by consumer and fair lending laws.

Bank Consolidation and Disparate Impacts

Due to historical exclusion, blatant extraction and destruction of wealth (e.g Tulsa Massacre, mortgage crisis of 2008) not only is the wealth of Black Americans impacted generally, but when a crisis hits, the Black community and other communities of color are less able to absorb the shock and And are more vulnerable to long-term debilitating economic losses. The COVID pandemic has proven this once again. It has not only disproportionately impacted the health of BIPOC, but the economic impact has been devastating. Approximately 60% of whites and Asian American adults currently say their personal financial situation is in excellent or good shape. Yet 66% of Blacks and 59% of Latines say their finances are in fair or poor shape.[9] In addition, a study by the National Women's Law Center found that "nearly six in ten Latinas and over half of Black, non-Latina women were in a household that has lost employment income since March 2020."[10] They also found that more than one in five Black, non-Latine women and more than one in six Latinas were behind on rent or mortgage payments.[11]

Importantly, the 10 majority-Black counties with the lowest concentration of financial institutions are all located in the South (Alabama, Georgia, Louisiana, Mississippi and Virginia). This is notable given the long lasting generational damage that stems from slavery and Reconstruction; a history that continues to impact BIPOC people and communities today.

The role of Banks in the commodification of Black lives and in the extraction of wealth from Black communities is not merely a historical sin. As part of a COVID stimulus package, the Biden Administration approved debt relief for Black and POC farmers as a way to make amends for a legacy of racism and discrimination. But debt relief has not yet been granted as white farmers sue for "reverse racism" and banks complain that it will eat into their profits by permitting early loan repayment.[12]

The exclusion and extraction of wealth from BIPOC is not limited to large historical events. Today, bank fees often result in customers leaving banking altogether. And, more ominously, branches that charge higher fees may be the only options available in BIPOC communities. A Bankrate survey found that Black and Latine bank customers are paying more than twice the amount of bank fees paid by white Americans. In addition, whites were more likely to have a no-fee bank account than Blacks or Latines.[13]

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[9]https://www.pewresearch.org/social-trends/2021/03/05/a-year-into-the-pandemic-long-term-financial-impact-weighs-heavily-on-many-americans/
[10] https://nwlc.org/wp-content/uploads/2021/04/PulseWeek26FS.pdf
[11] https://nwlc.org/wp-content/uploads/2021/04/PulseWeek26FS.pdf
[12] https://www.nytimes.com/2021/05/19/us/politics/black-farmers-debt-relief.html?
[13]https://www.cnbc.com/2021/01/13/black-and-hispanics-paying-twice-amount-banking-fees-than-whites-survey.html

At California Reinvestment Coalition, we see and hear about these experiences of exclusion and extraction of BIPOC consumers by banks in our Economic Wellness Promotora Program. In 2020, we launched the Promotora Program to support the financial well-being of low-income BIPOC families. The Program is patterned after the community health worker model, which delivers basic health care information to historically disenfranchised communities by training members from the community to provide outreach and education. In the same way, Economic Wellness Promotoras provide outreach and education by building trust with people who face multiple barriers to achieving financial security. Over the past year, CRC's Promotoras provided online workshops and training, and connected micro-entrepreneurs with safe and affordable financial resources to survive the economic downturn, which has disproportionately impacted BIPOC communities. The Program also engages CRC in a dialog with community members on the barriers they face in accessing safe, affordable financial resources and products. In its first year, 874 community members participated in the program—over 95% of which were BIPOC. From our community participants, we found that systemic barriers keep low-income BIPOC unbanked. Black and Latinx participants report experiencing poor and/or unfriendly service from bank staff. Participants expressed feeling "not good enough," or "wrong" or "unwelcome," when attempting to access banking products and services. In addition, families need access to affordable credit, including low-interest, small-dollar loans. With little or no access to affordable and safe credit products, many low-income families rely on predatory payday loans to make ends meet. Low wages, a lack of full-time employment, a reduction in working hours, a job loss, or an unexpected expense can keep people in this debt trap.

Recommendation: BIPOC and low-income customers are who bank regulators need to hear from in conducting bank examinations and considering merger applications in order to measure the public benefit of a proposed merger. Regulators need to extend comment periods to allow for this.

Consolidation: Branch Closures Harm Communities

The rate of bank consolidation continues to increase. A report by the National Community Reinvestment Coalition found that between 2008 and 2020, 14% of all bank branches closed. Between 2008 and 2016, 86 new "banking deserts" were created in rural areas, meaning there wasn't a bank branch within 10 miles of populated areas. BIPOC are disproportionately impacted by bank branch closures in rural areas, with 25% of all rural closures taking place in majority BIPOC census tracts.[14]

It is BIPOC communities that are disproportionately impacted by bank consolidation, since we are already disadvantaged in terms of the number of bank branches in our neighborhoods. It has been well-documented that bank branches are scarce in BIPOC communities and are largely concentrated in majority white neighborhoods. In fact, a study found that the "darker" the

[14]https://www.npr.org/2021/03/26/979284513/what-are-we-going-to-do-towns-reel-as-banks-close-branches-at-record-pace

county, the fewer banks it had, and the whiter the county, the more banks it had.[15] The same study found that in counties that are over 50% Black and Brown, there are 27.1 financial institutions for every 100,000 people. In contrast, in counties that are over 50% white, there are 40.6 banks for every 100,000 people. And the study found that "predominantly Black communities have 32 branches per 100,000 people, while majority Latine areas have 22.51 branches. Meanwhile, Native Americans suffer from the lowest bank penetration at only 20.53 per 100,000." The closure of the already low numbers of branches in communities of color means that any further closures could result in the creation of 'bank deserts', with the closure of the last bank branch in town.[16] Bank consolidation drives branch closures, an FDIC market share report shows that twenty years ago there were 369 banks in California and now there are only 192.[17]

Disturbingly, the fact that communities of color have fewer bank branches translates into their small businesses struggling to access capital. The COVID19 pandemic and the resulting relief resources, like PPP loans, were not equitably accessed by small businesses owned by BIPOC, largely due to the failure of banks to develop and maintain relationships with BIPOC-owned businesses. A study by a senior economist at the Federal Reserve found that half of bank PPP loans came from banks with branches within two miles of the borrower, and that borrowers using a closeby bank received credit sooner, a critical difference as cities and states locked down and small businesses shuttered.[18]

The lack of community banks in neighborhoods of color impacts the economic development of the area and the ability of BIPOC households to build intergenerational wealth. Having fewer opportunities to access safe and reliable banking places BIPOC at a disadvantage early on. Additionally, loan denials are higher for these communities. 2017 data from the Federal Reserve Board revealed that banks denied credit to more than half of Black small business owners and nearly 40% of Latine small business owners.[19] Small businesses located in neighborhoods of color have a harder time accessing capital than small businesses in white neighborhoods, leading to the widening of the racial wealth gap.[20]

According to the Boston Federal Reserve, only 61% of Black-owned small businesses applied for a PPP loan, and 1 in 5 had never heard of the program.[21] Mystery shopping of bank small business lending conducted by the National Community Reinvestment Coalition found disparities in how banks treated loan seekers, including that white mystery shoppers were given significantly better information about business loan products, particularly information regarding loan fees. Additionally, white mystery shoppers were told what to expect 44% more frequently

[15] https://atlantablackstar.com/2016/02/20/bank-deserts-study-finds-banks-concentrated-majority-white-communities-scarce-black-neighborhoods/
[16] https://ncrc.org/research-brief-bank-branch-closure-update-2017-2020/
[17] https://www7.fdic.gov/sod/sodMarketRpt.asp?barItem=2.
[18] https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3839671
[19] https://www.nclc.org/images/pdf/rulemaking/CFPB-ECOA-RFI-Comment-Letter.pdf
[20] https://ncrc.org/wp-content/uploads/2017/05/NCRC_Branch_Deserts_Research_Memo_050517_2.pdf
[21] https://www.bostonfed.org/news-and-events/news/2021/07/snapshot-of-black-small-business-owners-shows-worry-about-access-to-credit-during-pandemic.aspx

than Hispanic mystery shoppers and 35% more frequently than Black mystery shoppers.[22] Studies in mortgage lending also find similar disparities for Black borrowers and other borrowers of color. A 2016 study found that mortgage loan originators offer more details about loans and are more likely to send follow-up correspondence to white borrowers. The effect of this preferential treatment, or better said, discriminatory behavior by lenders toward Black borrowers is equivalent to the effect of having a credit score that is 71 points lower.[23]

As bank consolidation continues, and as branch closures and access to fairly priced credit for BIPOC homebuyers and small business owners shrinks, the problem is only worsening.

Recommendation: Regulations should ensure CRA obligations continue for communities that lose branches. In addition, banks that close branches should have their mergers and acquisitions applications more closely evaluated to ensure that public benefit outweighs any harm.

The Magic Wand that Wasn't: Technology

Innovation in the financial services industry has been heralded as creating the potential for increased access to banking, especially as branch closures and efficiencies increase. While technology allows for financial institutions to lower overhead costs by not paying for brick and mortar branches, the benefit to BIPOC is less clear. Worse, with opaque algorithms and machine learning, technology can perpetuate discriminatory practices.

As technology and access to mobile banking promised to be the "equalizer," an FDIC survey conducted in 2019 found that 83% of people still visit bank branches.[24] The closure of branches has not only left small businesses with less access to PPP and other small business loans, it has left low-income families without access to bank accounts while awaiting stimulus payments. In addition, individuals who are unbanked, non-tax filers making less than $12,000 a year, and Americans who do not receive social security benefits, were directed by the IRS to fill out an online form to receive their payments on a prepaid card—and there was a hard and fast deadline. What this dispersal system didn't take into account is the disparities in the digital divide. If public recovery efforts are not developed with racial inequities in mind and consciously designed to help close these gaps, there will always be a widening wealth gap. BIPOC lose wealth faster than non-BIPOC yet they do not recover as fast economically, especially during times of crises. Economic recovery efforts should never be race-blind, rather they should be designed with the goal of closing the racial wealth gap.

In the US, 6% of Americans, or more than 20 million people, do not have access to high speed wifi. Many of them live in rural areas. The World Economic Forum reported that this number is

[22] https://ncrc.org/disinvestment/
[23] Hanson, Andrew & Hawley, Zackary & Martin, Hal & Liu, Bo, 2016. "Discrimination in mortgage lending: Evidence from a correspondence experiment,"
[24] https://www.fdic.gov/analysis/household-survey/index.html

likely understated and that 19 million unconnected households are in rural areas .[25] The Federal Reserve Bank of Kansas found that there are two reasons for the lack of adoption of financial services - financial exclusion and digital exclusion.[26] Without widespread access and connection to high-speed Internet, technology will never be the great equalizer. Instead it will continue to widen the divide and underscore the systemic racial barriers that permeate multiple overlapping systems.

While a record percentage of California households are connected to the Internet, 15% of households in the state, nearly 2 million people, are digitally disadvantaged. Approximately 1.25 million, or roughly 9.6%, are unconnected, and approximately 730,000, or roughly 5.6%, are under-connected. The digital divide remains especially challenging for a significant number of low-income and Latine households, seniors, and people with disabilities. With so many activities having gone digital, such as online banking, during the pandemic, the disadvantage only has grown more acute. Affordability is the main reason that keeps households from connecting to the Internet, with digital literacy and the lack of appropriate computing devices also being relevant factors.[27]

The Biden Administration has proposed closing the digital divide by including a $65 dollar investment to ensure that, "Every American has access to reliable high-speed Internet," and by lowering the cost of Internet for low-income households by requiring providers to offer low cost, affordable plans.[28] This public investment of taxpayer dollars seeks to end "digital redlining" while also growing the customer base for privately owned Internet providers. This public investment should not come without strings attached, some of which include: increased enforcement of fintech and requirements for fintech to reinvest in local communities. Our Governor and Legislature have also committed significant resources to addressing the broadband issue[29] and should ensure all providers and fintech companies play by the rules and support communities.

As with many or all of the challenges outlined here, banks and other financial institutions have been part of the problem. Now, it's time they become part of the solution. Specifically, banks and other institutions must support efforts to increase infrastructure access to high-speed broadband, increase access to devices, and increase access to digital literacy training on a wide scale. Currently, California is witnessing two large bank mergers involving rural banks that are more likely to have CRA assessment areas including underserved Native American communities and tribal lands, as well as rural communities with insufficient broadband access. We urge Tri Counties Bank and Citizens Business Bank to address these needs in strong CRA

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[25] https://www.weforum.org/agenda/2020/04/coronavirus-covid-19-pandemic-digital-divide-internet-data-broadband-mobbile/
[26] forbes.com/advisor/banking/digital-divide-and-its-impact-on-banking/
[27] https://www.cetfund.org/action-and-results/statewide-surveys/2021-2/
[28] https://www.whitehouse.gov/briefing-room/statements-releases/2021/07/28/fact-sheet-historic-bipartisan-infrastructure-deal/
[29] https://www.gov.ca.gov/2021/07/20/governor-newsom-signs-historic-broadband-legislation-to-help-bridge-digital-divide/

Plans, and for regulators to condition any merger approvals on the development of such strong and transparent plans.

Recommendations: (1) Public recovery efforts need to be developed with racial inequities in mind and consciously designed to help close these gaps. Economic recovery efforts should never be race-blind, but instead they should be designed with the goal of closing the racial wealth gap. (2) Regulators should condition merger approvals on the bank having a strong CRA plan that is informed by communities.(3) Banks and other institutions should support efforts to increase infrastructure access to high-speed broadband, increase access to devices, and increase access to digital literacy training on a wide scale.

Banking the Unbanked

The unbanked are disproportionately people of color, those making under $15/hour, and disabilities. Nearly 14% of Black American households are unbanked and 12.2% of Latine households are unbanked compared to 2.5% of white households.[30] Fintechs promised to fill the gap left by banks by offering banking and financial services to the fingertips of the masses. The Federal Reserve makes an argument for asking the question: "Does financial technology that aims to include more people instead introduce alternative forms of bias, exclusion, or exploitation of marginalized communities, including communities of color?" It is the right question to be asking. The decisions made by financial institutions have always been a black box. By taking human interaction out of the system, fintechs claim to be serving a diverse population. But the black box for fintechs is even more opaque as institutions claim their systems are proprietary.t is unclear if institutions can even explain their decision-making algorithms, and regulators, too, are only just learning about these technologies.

Data are never race neutral. Data is a compilation of recorded past experiences that are input into a machine for the purpose of making credit decisions in the growing technology-focused banking field. This creates a problem for populations that have been systematically discriminated against due to race, ethnicity or gender. The data used are rife with bias, including data that are highly dependent on race or gender, such as evaluating risk based on income, savings, and credit scores. For example, data on income that is entered into an algorithim may not take into account that because of discrimination, women make less than men and can therefore cause a negative outcome by increasing denial rates or higher interest rates. The National Consumer Law Center (NCLC) explains, "Learning algorithms, processing large volumes of information, will likely pick up subtle but statistically significant patterns that correlate with race and other protected characteristics and replicate existing bias. Serious concerns have arisen regarding the accuracy, relevance and predictability of the data sources used in these models and its potential to worsen existing disparities."[31] It is impossible to ensure that Artificial Intelligence (AI) and Machine Learning (ML) models are free of bias unless we first admit that bias exists.

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[30] https://www.frbsf.org/community-development/files/fintech-racial-equity-inclusive-financial-system.pdf
[31] https://www.nclc.org/images/pdf/rulemaking/CFPB-ECOA-RFI-Comment-Letter.pdf

The other challenge is the lack of regulatory oversight in this space. We are very much concerned that the growth of fintech lending not subject to sufficient regulatory oversight or transparency has allowed for discrimination to flourish under the guise of complex and secretive black boxes and algorithms. Fintech companies claim to be race-neutral, stating that their lending practices are facially neutral. In fact, practices such as English-only products exclude Limited English Proficiency (LEP) borrowers, and the data used by fintech can also replicate historical discrimination practices. Some might claim that these are unintended consequences, but discriminatory practices, whether intentional or not, have the same disparate and harmful impacts on diverse populations.

As fintech grows, and regulators lag in regulating it due to the rapidly advancing technology or due to delayed regulations, it has become apparent that the innovation space or the "sandbox" can result in disparate impacts if a company doesn't understand the data and model they are using. It is imperative that regulators ensure that a model is not used unless it is thoroughly understood by the financial institution. The National Fair Housing Alliance (NFHA) reported a study that found "65% of respondent companies were not able to explain, with specificity, how AI decisions predict certain outcomes. Moreover, 68% of companies in the study reported they have insufficient mechanisms in place to comply with existing regulations."[32] This should raise serious questions related to governance and compliance for any financial institution and its regulators. It cannot be that an institution is adopting and implementing models and yet cannot explain how the model works and whether it will result in disparate impacts on protected populations.

In July 2021, CRC signed onto a comment letter led by the National Fair Housing Alliance raising concerns and offering recommendations on how to regulate this space. Most importantly, the Agencies should define "model risk" to include the risk of discriminatory or inequitable outcomes for consumers, rather than just the risk of financial loss to a financial institution. We also need for all relevant regulatory agencies to prioritize robust supervision and enforcement to hold institutions accountable to adhere to fair lending and related laws, as well as Compliance Management Systems.[33] We recommend that regulators also pay close attention and conduct testing of AI and MI models created by third parties for lenders. ECOA and Fair Lending laws create the framework by which to regulate the industry and banking regulators as well as the Consumer Financial Protection Bureau (CFPB) should regulate vigorously.

Consumers should not be subjected to predatory, unfair and abusive products. Congress and the federal regulators have not done a good job protecting consumers from such abuse, and this failure is more pronounced as new financial products, services and models are introduced in ways that can discriminate and harm consumers. As such, consumers, communities and advocates have organized to fight for greater protections at the state and local level. But these

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[32] https://nationalfairhousing.org/wp-content/uploads/2021/07/Federal-Banking-Regulator-RFI-re-AI_Advocate-Letter_FINAL_2021-07-01.pdf

[33] https://nationalfairhousing.org/wp-content/uploads/2021/07/Federal-Banking-Regulator-RFI-re-AI_Advocate-Letter_FINAL_2021-07-01.pdf

efforts are substantially undermined when fintech companies partner with banks to take advantage of preemption, true lender, valid when made, exportation of home state interest rate caps, or other legal precepts that are invoked in order to override state governments seeking to protect their residents from financial harm. As financial technology and digitalization continue to grow, legislators and regulators need to coordinate oversight, regulations and enforcement to ensure that institutions respect fair lending and consumer protection principles and laws, and that banks and fintech cannot continue to game the system through legal fictions and regulatory arbitrage that results in greater profits, less oversight, and increased harm to BIPOC communities.

Recommendations: (1) A serious look at the governance and compliance for any institution that is adopting and implementing models and can not explain how the model works and whether it will result in disparate impacts on protected populations. (2) Regulators should not allow for the use of a technology until it has been thoroughly tested and understood by the leadership of the company and the regulating agency (3) Regulators should define "model risk" to include the risk of discriminatory or inequitable outcomes for consumers, rather than just the risk of financial loss to a financial institution. (4) All relevant regulatory agencies should prioritize robust supervision and enforcement to hold institutions accountable to adhere to fair lending and related laws, as well as Compliance Management Systems.[34] (5) Regulators should also pay close attention and conduct testing of AI and MI models created by third parties for lenders. ECOA and Fair Lending laws.

Experience from the Frontlines of Mergers and Acquisitions

When US Bank announced its acquisition of California-based Union Bank in the fall of 2021, the California Reinvestment Coalition and its members had already engaged in seven bank mergers impacting the state since late 2020. As communities fight to keep bank branches open, to ensure bank merger consolidation does not lead to less reinvestment, and as they struggle to participate meaningfully in increasing merger and acquisition activity with limited time to comment, it is imperative that regulators not merely rubber stamp applications but also give the applications the scrutiny they deserve. There is support from the White House for revising the current merger oversight system. President Biden recently issued an Executive Order meant to improve regulatory oversight of bank mergers "not later than 180 days after the date of this order, for the revitalization of merger oversight under the Bank Merger Act and the Bank Holding Company Act of 1956 (Public Law 84-511, 70 Stat. 133, 12 U.S.C. 1841 et seq.) that is in accordance with the factors enumerated in 12 U.S.C. 1828(c) and 1842(c)."[35]

We applaud the action taken by the Biden Administration to improve regulatory oversight, encourage a racial equity lens in evaluating the current system, and solutions to challenging

[34] https://nationalfairhousing.org/wp-content/uploads/2021/07/Federal-Banking-Regulator-RFI-re-AI_Advocate-Letter_FINAL_2021-07-01.pdf

[35] https://www.whitehouse.gov/briefing-room/presidential-actions/2021/07/09/executive-order-on-promoting-competition-in-the-american-economy/

public engagement processes. BIPOC communities still trying to dig themselves out of generations of financial exclusion and extraction now must also be vigilant and ready to battle the disappearance of branches, all with just 30 days for public comment on a proposed bank merger. Thirty days is just not enough time. And, often,community groups would never know when the 30-day clock begins to run. In addition, regulatory implementation of these processes are opaque and complicated. When Banc of California announced a bank merger earlier this year, we had to check the OCC's website to determine when the bank filed its bank merger application and when the comment period would begin. We only learned later that our searches for "Banc of California," the actual name of the bank, yielded no responses even after the application was submitted because the OCC website filed the entry as "Banc of CA." This regulatory and bureaucratic quagmire must end if communities are going to have a real and meaningful opportunity to engage in bank charter and merger application discussions.

Recommendations: (1) Bank merger and charter applications must be displayed prominently on agency websites, comment periods should be at least 90 days, and public hearings should be held where a significant number of commenters request them. (2) Applications and orders must demonstrate that approval will yield a clear public benefit, that past reinvestment activity has substantially helped to meet, not damage, community credit needs, and that the convenience and needs of impacted communities will be verifiably served. (3) Charter and merger application processes should require Community Benefits Agreements which reflect an assessment of community needs and an institution's efforts to help meet those needs, and regulators should condition approvals on compliance with these CBAs.

Communities can't wait for Change: The proposal for a new "Mega-Bank" and Amazon's Company Store

On Sept. 21, 2021, US Bank announced its proposed acquisition of California-based Union Bank for $8 billion.[36] If this mega merger is approved, the deal would make U.S. Bank the fifth largest bank in the U.S. and in California. Details of the application have not yet been made public, and although the bank has reached out to community groups to discuss the acquisition, both banks did little community engagement before announcing the merger. For example, Union Bank's 2016 Community Service Action Plan (CSAP) did not reflect the input of communities in California and expired last year. Union did not proactively prepare a CSAP to account for the expiration. US Bank does not have a public, forward-looking CRA plan either.

Union Bank focused on the environment in their last CSAP. But the criticisms of the bank related to environmental issues raise questions about the bank's goals and whether they reflect community input. Rainforest Action Network (RAN) called on Mitsubishi UFJ Financial Group (MUFG), the parent company to Union Bank, to stop "bankrolling climate change." In addition, MUFG was a lead funder for the Dakota Access Pipeline, ignoring the protests by indigenous communities, and funds coal power plants.[37] Such activities run sharply counter to Administration, Federal Reserve and public priorities and concerns.

[36] https://labusinessjournal.com/news/2021/sep/21/us-bancorp-buy-union-bank-8-billion-deal/
[37] https://www.ran.org/the-understory/ran-targets-mufg-union-bank-during-global-climate-action-summit/

This approach of doing good on one end of the bank and harm with the other, calls into question how financial institutions either create a public benefit or instead public harm.

We call on regulators to incorporate a racial equity and climate change audit as part of their regular CRA examinations and as an area of focus for increased scrutiny during mergers and acquisitions. After all, harm to communities must be taken into account when evaluating whether a bank is meeting the credit needs of ALL communities. This is a zero-sum game for communities who have historically been on the losing end of the financial services industry.

The same can be said for looking at a bank's lending practices for resulting harm. US Bank was a lead PPP lender in the relief program designed to help small businesses. Yet, it provided at least 2 PPP loans to notorious real estate developer GH Palmer—the first for $607,257 and the second for over $5 million.[38] Geoffrey Palmer, the owner of GH Palmer, has sued the city of Los Angeles over its eviction moratorium and lost. He has been sued for unlawfully keeping tenants' security deposits.[39] He has also sued the City of Los Angeles for its affordable housing ordinance,[40] and he spent $2 million to defeat California's Proposition 10, a measure backed by 525 community and faith-based organizations that would have created statewide rent control.[41] It is unclear how such a loan helps meet the credit needs of low-income and BIPOC communities.

After the OCC encouraged banks to offer installment loans to their customers in 2018, US Bank joined a small number of institutions that began to offer these loans. The loans are up to $1,000, and carry a hefty APR between 71-88% [42], and the predecessor loans have been debt traps for consumers. Regulators should take a close look at these and other lending programs to ensure they are not predatory.

Meanwhile, the encroachment of fintech into banking brings concerns of hypercharged harm. The fintech Oportun has applied for a national bank charter with the OCC despite targeting Latine borrowers with high-cost, double-digit interest rate loans, many of which prove unsustainable for working-class consumers. We opposed the merger in partnership with our allies at the Center for Responsible Lending, and legal service and community service providers from across the country. Oportun's abusive debt collection practices and its "sue-to-intimidate" model was well-documented by news outlets The Guardian[43] and ProPublica[44]. Oportun's egregious practices not only threaten the economic wellbeing of families, they potentially impact the immigration status of its borrowers. The CFPB is reportedly investigating Oportun's practices

[38] https://www.sba.com/ppp-funded-companies/california/g-h-palmer-inc-6182399
[39] https://la.curbed.com/2019/2/22/18236778/geoff-palmer-lawsuit-security-deposits
[40] http://www.ladowntownnews.com/news/developer-wins-lawsuit-that-could-jeopardize-affordable-housing-plan/article_a8e848a8-7f6f-587c-90b7-6c0655f358ff.html
[41] https://www.housinghumanright.org/is-billionaire-geoffrey-palmer-los-angeles-worst-developer/
[42] https://www.nerdwallet.com/reviews/loans/personal-loans/us-bank-simple-personal-loans
[43] https://www.theguardian.com/us-news/2020/aug/02/oportun-loans-lawsuits-latino-small-claims-california
[44] https://www.propublica.org/article/a-lender-sued-thousands-of-lower-income-latinos-during-the-pandemic-now-it-wants-to-be-a-national-bank

via a Civil Investigative Demand[45]. Of almost secondary concern is Oportun's proposed subprime CRA Plan consisting of online bank accounts and high-cost loans as a means to serve low-income and Latine consumers. A bank charter would only enable Oportun to expand its problematic practices by leveraging the reputation, preemption of state consumer protection laws, and low-cost funding that a national bank charter would provide. No bank application should be approved by a bank regulator if there are any questions as to whether it is clearly able to comply with consumer protection, fair housing, fair lending, and reinvestment laws.

Amazon is another player which has long been in the fintech space and has done so without becoming a bank. Amazon has payment services and credit services through Amazon Pay for merchants, Amazon Payment Organization, Amazon Cash, Amazon's Lending, and Amazon Card services. Amazon Lending provides loans to sellers that use Amazon. In effect, it is a small business loan. On its website, Amazon states that a seller may receive an invitation to apply for a loan. The loans are made by a third party, Chinese lenders and what it calls "Lender Service Providers." The LSP set the terms for the loans and criteria for underwriting. Amazon claims to use three Chinese LSPs, Yunshu, Dowsure, and HSBC.[46] Amazon Lending is reported to not check credit scores, nor does it review tax returns or bank statements. Instead, it makes a type of "Merchant Cash Advance" meaning it sets a monthly repayment plan and deducts the payments from your Amazon Seller Account. Unlike MCAs that vary the payment depending on sales, Amazon deducts a fixed percentage of sales no matter how well or poorly the seller is doing. If the seller has insufficient funds their seller account will be in the negative. Amazon makes loans from $1,000 to $750,000 and the repayment period is capped at 12 months. Finally, the loan cannot be used for things such as payroll or updating equipment. It can only be used for adding inventory and marketing on the e-commerce site.[47] It has also been reported that if a payment is not made after a seller's balance is negative and Amazon attempts to deduct payment from the seller's secondary bank account, Amazon can seize the sellers' inventory and collateral and sell it to pay off the balance.

Amazon Pay is the company's payment service provider. It offers third party businesses the opportunity to receive payments through its system. Amazon Lending, much like Square and other online payment service providers turned lenders, only lends to its sellers. It has access to millions of small businesses through its platform, and thereby also has a captive lending base.[48] The Amazon Pay service has grown to a reported 22% user share.[49] They invite its selleres to apply, making it easy, and offering simple access to a product they may or may not need. The ways in which Amazon conducts its business doesn't allow sellers to keep a dedicated inventory and forces them to use the Amazon fulfillment center and

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[45] https://investor.oportun.com/static-files/964d5453-0d80-48f8-acee-d2963ef78013
[46] https://sellercentral.amazon.com/gp/help/external/help.html?itemID=ZN5DX64LP2QYZ69&ref=efph_ZN5DX64LP2QYZ69_cont_G2
[47] https://www.fundera.com/business-loans/guides/amazon-lending
[48] https://www.marketplacepulse.com/amazon/number-of-sellers
[49] https://seekingalpha.com/article/4456737-understanding-amazons-fintech

thereby limits their access to bank small business loans. Ultimately, the goal of its lending services is to keep sellers indebted to Amazon.

Amazon has effectively created a type of 21st century company store by purposefully creating an indebted population that has no choice but to keep selling products on its platform. It also replicates the power dynamics of the traditional company store. Sellers rely on Amazon's platform to sell their products, and they have a loan from the company, which leaves them vulnerable. Sellers find themselves facing a power dynamic which is one sided and leaves them with very few choices.

Amazon and its ventures into financial services are largely unregulated. It's rapid growth should give regulators pause. Last month, Amazon announced a partnership with installment lender Affirm. Affirms press release reads, "It will be the first buy now-pay later purchasing option for Amazon (AMZN) customers and is seen as helping shoppers with buying larger-ticket items. A flexible payment solution will soon be available to Amazon.com customers at checkout."[50] The product has already rolled out to certain customers.

The fast growing products offered by Amazon, and its connection to the retail side of the business should be evaluated for antitrust violations consistent with the creation of a monopoly. Amazon is not the only tech company venturing into financial services. Venmo, PayPal, Apple, and Google all have payment services and currently also offer credit cards. Google offers personal loans through partnership with third-party lenders and PayPal offers small business loans.

In California, the newly created Department of Financial Protection and Innovation (DFPI) has licenses for Amazon Fund LLC and Amazon Capital. Amazon had $873 million in outstanding loans in 2019. In 2019, Amazon Capital had its license revoked for failing to pay a $400 assessment fee, and yet continued making loans in the state. A consent order was agreed to that allowed Amazon to continue operating as a lender.[51] Amazon continues to grow it's financial services. Before long we may find it applying to be a bank.

In all of these concerning trends, we see that corporations are profiting from regulatory blind spots or blindness, while BIPOC, rural communities and consumers fall further behind. It was reported that in 2021, 18% of Amazon sellers (the highest percentage) lived in California.[52]

Recommendations: Legislative and regulatory bodies need to provide meaningful and coordinated oversight of these newer companies and technologies and to provide vigorous enforcement of consumer protection, fair housing, fair lending and reinvestment laws. To that end, we look forward to working to ensure that:

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[50] https://seekingalpha.com/article/4456737-understanding-amazons-fintech

[51] https://dfpi.ca.gov/wp-content/uploads/sites/337/2020/02/Consent-Order-Amazon-Capital-Services-Inc.pdf

[52] https://www.junglescout.com/blog/amazon-seller-demographics/

- No bank application should be approved by a bank regulator if there are any questions as to whether the applicant is clearly able to comply with consumer protection, fair housing, fair lending, and reinvestment laws.
- New, joint Community Reinvestment Act rules explicitly consider bank access to and impact on Black Indigenous Communities of Color; downgrades for financial harm such as discrimination and the financing of displacement; expanding reinvestment obligations to cover where online lenders seek and earn profits; enhancing community participation through changes to the applications process and examinations processes, as well as promoting Community Benefits Agreements.
- The reach of the Community Reinvestment Act is expanded to require reinvestment and fair lending obligations for non bank fintech and online financial institutions at the federal level or that states require community reinvestment obligations for all fintech companies.
- Section 1071 small business lending data collection will be robust in order to identify discrimination in small business lending, include broad coverage of all lenders including Amazon Lending and other Merchant Cash Advance and Factor lenders, and provide that all data collected will be made publicly available to ensure the purposes of the statute are met.
- All relevant regulatory bodies develop aggressive and coordinated protocols for overseeing new fintech and digital products, services and models so that discrimination is prohibited and that consumers are not harmed.
- All financial institutions conduct racial equity and climate audits to not only ensure that discriminatory policies, practices and products cease, but also that corporations provide sufficient remedy for generations of harm caused.

Creating Alternatives to Traditional Banking: The Role of Public Banking

Banks were created to serve white Americans and have explicitly excluded Black Americans and other People of Color. From underwriting criteria that is based on whiteness, credit discrimination, and the lack of branches in communities of color, white supremacy and structural racism is embedded in the banking system. CRC, our members and our partners have long been working to help banks end these practices and do better. We are committed to continue that work. But it is also time to begin to think about alternatives to the traditional financial system, and create new systems that serve all but are specifically designed to serve the unbanked, underserved, and BIPOC who have long been denied affordable financial services and access to credit.

In California, AB1177 is on the Governor's desk and moves forward with the creation of a first-of-its-kind universal banking option that will be run by the State of California. The banking option will be conducted in partnership with financial institutions, but the state will issue accounts to customers that are free of charge with no overdraft. CalAccount, as it is called, seeks to bank the unbanked, many of whom either distrust the banking system because of past experience or have been outright excluded. Additionally, CalAccount will help those who have been caught in the overdraft debt cycle or blacklisted by the ChexSystem, by providing safer, more reliable options than the high-fee check-cashing services.

We've discussed the dearth of bank branches in rural America and in communities of color. In addition, brick and mortar branch closures only further disparities in these communities. Without a bank nearby, Americans have to rely on expensive check cashers to conduct financial business. We've discussed the challenges of technology and whether it will serve to close or widen the gap, and whether it truly provides more access to BIPOC or exacerbates disparities. It will likely take an ecosystem of banking products and services to meet the needs of our diverse country; therefore, it is imperative that we nurture public banking either through the creation of local public banks that are tied to the federal reserve or the creation of postal banking. As University of California, Irvine law professor and banking law expert Merhsa Baradaran explains, the current banking system has failed to make banking accessible to all, as an "erosion of legal requirements on banks has enabled banks to abandon lower-profit regions and customers under the guise of 'inefficiency' and market competition. The United States has a federally sponsored banking system that is exclusionary. Those who are excluded are the most financially vulnerable individuals and communities who are forced to pay the most for services."[53]

Financial institutions have access to the Federal Reserve's Payment system, and customer deposits are insured by the FDIC. Today, each aspect of banking, including deposits, loans, and simple financial transactions, relies on a robust network of government support. Each time a bank sends or accepts money, they are using the Federal Reserve's payments system, customer deposits are insured by the FDIC and when the FDIC fund goes red (2008) the deposits are backed by the US Treasury.[54] The Banking system relies on government support for its very existence, yet it excludes a wide swath of the population.

Postal Banking is one solution that should be considered to fill this gap. Every American knows where their post office is, therefore it would expand access to savings and checking accounts, and can potentially offer small dollar loans at an affordable rate. Public Banks with access to the Federal Reserve Payment System, is another option for providing public options to the unbanked and underbanked.

Recommendation: Pass the Public Banking Option Act (Ocasio-Cortez/Tlaib). These banks are not only going to create opportunities for the unbanked, but these banks can play an important role in funding infrastructure projects, creating jobs, and more.

Conclusion

We will need to be vigilant to ensure BIPOC communities are not further harmed by the banking system as it continues to rapidly embrace evolving technologies. The last financial crisis brought with it novel products and technologies meant to improve efficiencies and access. Instead, it brought about disproportionate harm against BIPOC households. This time, we must ensure that industry practices and profits do not once again outpace regulatory oversight and consumer

[53] https://financialservices.house.gov/uploadedfiles/hhrg-117-ba15-wstate-baradaranm-20210721.pdf
[54] https://financialservices.house.gov/uploadedfiles/hhrg-117-ba15-wstate-baradaranm-20210721.pdf

protection. We urge the development of several important policies. This includes: a strong Community Reinvestment Act that a) enhances the role of community voices and Community Benefits Agreements, b) explicitly considers race, c) downgrades banks for harm caused by their discrimination and displacement financing, d) discourages further branch closures,e) expands reinvestment obligations to where online lenders seek and earn profits, and f) urges banks to address broadband needs so that rural and Native American communities can participate in the digital economy. We also urge all regulators to develop a coordinated and robust regulatory responses to fintech that considers discrimination and inequitable outcomes as a significant risk, requires firms to be able to explain their models, and ensures strong compliance with consumer protection and fair lending laws. We urge the finalization of a strong Section 1071 small business data collection rule to ferret out discrimination by requiring broad coverage of lenders including Merchant Cash Advance and factoring, disclosure of APR pricing and reasons for denial data, and public disclosure of all data collected. And, we urge passage of federal and state laws to authorize and create public banking options for BIPOC and other consumers who are tired of waiting for financial institutions to get it right.

In pursuit of profits, financial institutions will take as many liberties as they are given. It is imperative that federal and state agencies remove regulatory blinders and prevent regulatory arbitrage so that the public can come to expect that discrimination and consumer abuse will not be tolerated due to regulatory failure to act or inability to comprehend new models. In starting to acknowledge the inequities of banking's past, we cannot allow ourselves to lose sight of the need to prevent the foreseeable abuses of the future.

Testimony of Makada Henry-Nickie,
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Governance Studies
Brookings Institution

Before the
United States House Financial Services
Consumer Protection and Financial Institutions Subcommittee

Hearing on
"The Future of Banking: How Consolidation, Nonbank Competition, and Technology are Reshaping the Banking System"

September 29, 2021

Introduction

Chairman Perlmutter, Ranking Member Luetkemeyer and distinguished Members of the Committee. I am pleased to join today's hearing on the Future of Banking. I am Makada Henry-Nickie, Fellow at The Brookings Institution. My comments today will focus on market trends, the rise of FinTechs as consequential market players, and the impact of these shifts on marginalized consumers. My comments on these issues today are my own and do not reflect an official position from The Brookings Institution.

The US is in the midst of a generational demographic change driven by communities of color. In the last decade, Asian and Hispanic Americans grew 35.5% and 23%[1]. However, the financial services sector has yet to respond to these representational changes. Within the consumer financial market, minority households systematically occupy status quo roles on the fringe, rather than sitting at the center of market models as growth drivers. According to FDIC's 2019 banking survey, 7.1 million households remain unbanked. Most of these households—64%--were from Black and Hispanic communities. Indigenous communities have an unenviable long-standing experience of systematic financial exclusion. Despite modest progress in promoting financial inclusion, 16.3% of Indigenous

[1] Census Bureau Race and Ethnicity in the United States: 2010 Census and 2020 Census see: https://www.census.gov/library/visualizations/interactive/race-and-ethnicity-in-the-united-state-2010-and-2020-census.html

Americans are unbanked and disproportionately exposed to alternative financial services and products, such as predatorial payday loans and title loans.[2]

The prosperity of our economy is stifled when future growth segments are excluded from fully participating in the US economy. The Biden-Harris administration has drawn on a comprehensive accountability model to orient the federal government's policy framework toward a racially inclusive economy. While President Biden's racial equity agenda marks a sea change moment, it is only a first step towards closing profound longstanding racial wealth gaps.[3] Financial intermediaries and regulators must do their part to ensure that the financial services ecosystem responds to the unmet needs of minority communities.

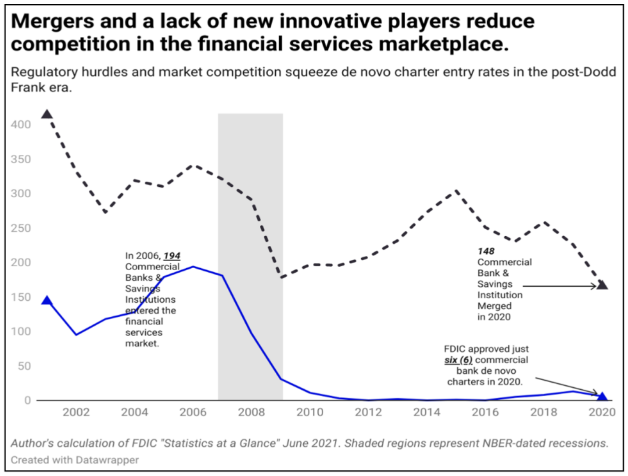
Reduced Banking Competition Creates Risks for Marginalized Communities

The Great Recession dramatically changed the landscape of financial services. More than a decade after the subprime crisis, the banking infrastructure continues to contract. In the years since the housing bubble, the number of commercial banks has fallen sharply from 7,279 in 2007 to 4,375 in 2020, an astonishing 40% decline.[4] According to a 2017 FDIC study, the accelerated pace of mergers and acquisitions between community banks accounted for 91% of the consolidation trend.

Notably, acquired community banks were often less profitable than similarly sized institutions, often cited as problematic on the FDIC's watch list.[5] In addition to merger activity, enhanced regulatory oversight and market dynamics undermined de novo bank formation, increasing complexity in the post-crisis banking landscape.

Figure 1

[2] Federal Deposit Insurance Corporation (FDIC), *How America Banks: Household Use of Banking and Financial Services, 2019 FDIC Survey* (October, 2020).
[3] Exec. Order No. 13985, 86 Fed. Reg. 7009 (January 20, 2021).
[4] Federal Deposit Insurance Corporation (FDIC). Statistics at a Glance: Historical Trends. June 30, 2021.
[5] Breitenstein, Eric, and Nathan Hinton. "Community Bank Mergers Since The Financial Crisis: How Acquired Community Banks Compared With Their Peers." *FDIC Quarterly*, vol. 11, no. 5, 2017, pp. 41–52, www.fdic.gov/analysis/quarterly-banking-profile/fdic-quarterly/2017-vol11-4/fdic-v11n4-3q2017-article2.pdf.



In 2018, the FDIC Bank Application Actions database recorded 16 approved new bank applications at the end of the second quarter of 2021, only one de novo application was approved.[6] This extreme reduction in commercial banking has serious implications for minority and low-income communities that depend on the physical retail network to interact with the financial services system. Contrary to broader digital trends, select segments within underserved communities disproportionately rely on physical retail outlets to connect with mainstream banking. The FDIC's 2019 under-banked survey underscores the importance of bank branches to groups that visit branches more than ten (10) times a year: (1) older Americans; (2) people with disabilities; (3) people with regular income volatility; and (4) indigenous Americans.[7]

Correspondingly, the hollowing out of the retail bank footprint also impacts the small business community. Studies have documented the contractionary effects of branch closures on local lending for small businesses. These effects can linger in markets for many

[6] FDIC Banking Applications Actions database https://www.fdic.gov/regulations/applications/actions.html
[7] Federal Deposit Insurance Corporation (FDIC), *How America Banks: Household Use of Banking and Financial Services, 2019 FDIC Survey* (October, 2020).

years.[8] Other researchers have shown that lenders without branch anchors allocate less capital to small businesses than branch-tethered lenders, although these marginal effects have slightly attenuated since 2011.[9] Efficiency gains are the celebrated mantra of merging institutions, but low-income communities rarely realize economies of scale. Instead, mergers led to increased FHA loan denials and substantial increases in interest rate pricing on non-agency mortgage loans, particularly for subprime borrowers.[10]

FinTechs Response to Gaps

Bank mergers have resulted in enormous credit gaps in low-income communities. Financial technology companies (FinTechs) have responded to the gap by providing innovative credit and savings products. Missteps with the Paycheck Protection Program (PPP) illustrated the remarkable ability of FinTech companies to rapidly direct critical credit flows to underserved consumers. According to the Federal Reserve Bank of New York, one in four black small business owners applied for and received PPP loans from fintech lenders, twice the rate of other ethnic and racial groups, including Hispanics.[11]

Lack of existing banking relationships was a key feature of Black PPP applicants. Historical barriers contextualized the PPP saga and limited the ability of banking institutions to respond in real time. For example, the SBA relaxed the identification rules for companies with established relationships. However, lenders were still expected to comply with strict Know Your Customer (KYC) identification regulations when processing applications for companies without conventional connections, which proved costly for minority-owned enterprises. Since the subprime crisis, fintechs have emerged as consequential players in

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[8]Nguyen, Hoai-Luu Q. 2019. "Are Credit Markets Still Local? Evidence from Bank Branch Closings." *American Economic Journal: Applied Economics*, 11 (1): 1-32.

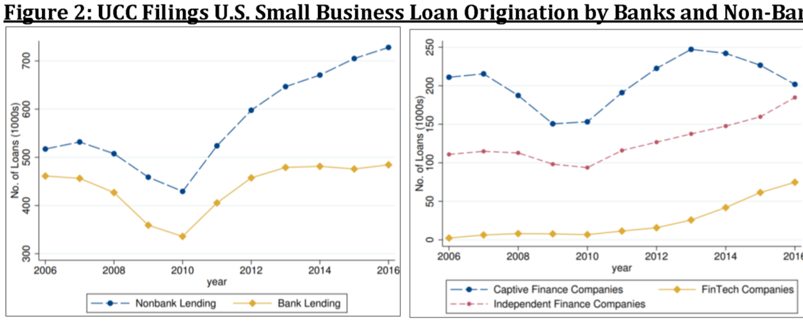
[9] Anenberg, Elliot, Andrew C. Chang, Serafin Grundl, Kevin B. Moore, and Richard Windle (2018). "The Branch Puzzle: Why Are there Still Bank Branches?," FEDS Notes. Washington: Board of Governors of the Federal Reserve System, August 20, 2018, https://doi.org/10.17016/2380-7172.2206.

[10] Ratnadiwakara, Dimuthu and Yerramilli, Vijay, Effect of Bank Mergers on the Price and Availability of Mortgage Credit (September 1, 2020). Available at SSRN: https://ssrn.com/abstract=3695662 or http://dx.doi.org/10.2139/ssrn.3695662

[11] Jessica Battisto, Nathan Godin, Claire Kramer Mills, and Asani Sarkar, "Who Received PPP Loans by Fintech Lenders?," Federal Reserve Bank of New York *Liberty Street Economics*, May 27, 2021, https://libertystreeteconomics.newyorkfed.org/2021/05/who-received-ppp-loans-by-fintech-lenders.html.

the financial services sector. According to a recent New York University study, fintechs and nonbank finance companies steadily grew their share of the small business lending market (Figure 2).[12]

Figure 2: UCC Filings U.S. Small Business Loan Origination by Banks and Non-Banks



Source: Adapted from The Rise of Finance Companies and FinTech Lenders in Small Business Lending. Manasa Gopal and Philipp Schnabl. May, 2020.

Crucially, the NYU study found that fintech-oriented small business loans have emerged as near perfect substitutes for missing bank loans. While early evidence suggests that the benefits of fintech-enhanced competition inure to low-income communities, it is important to emphasize that this imbalance applies equally to downside risks. A controversial University of Texas Austin report linked some fintechs to higher rates of fraudulent PPP loans, implying that these companies generated significant fee-based revenues while facilitating costly waste at taxpayers' expense.[13]

The evidence of fintech lenders' track record is mixed. A groundbreaking Berkely study showed that fintech lenders reduced loan denial disparities but continued to perpetuate pricing disparities that disadvantaged Black and Hispanic borrowers, though to a lesser extent than traditional banks. [14] However, findings of a recent matched-pair paper

[12] Gopal, Manasa and Schnabl, Philipp, The Rise of Finance Companies and FinTech Lenders in Small Business Lending (May 13, 2020). NYU Stern School of Business, Available at SSRN: https://ssrn.com/abstract=3600068 or http://dx.doi.org/10.2139/ssrn.3600068

[13] Griffin, John M. and Kruger, Samuel and Mahajan, Prateek, Did FinTech Lenders Facilitate PPP Fraud? (August 17, 2021). Available at SSRN: https://ssrn.com/abstract=3906395 or http://dx.doi.org/10.2139/ssrn.3906395

[14] Bartlett, Robert, et al. "Consumer-Lending Discrimination in the FinTech Era." *National Bureau of Economic Research*, 2019. *Crossref*, doi:10.3386/w25943.

contradict the Berkley report, showing virtually no lending discrimination between whites and borrowers of color among fintech-oriented mortgage loans.[15] Despite mixed signals, fintechs have clearly added value to the consumer financial market. As with their bank counterparts, fintech companies need robust oversight to ensure that marginalized consumers have access to a fairer, more transparent market.

Leveling the Playing Field

Increased competition is vital to an innovative market that increasingly offers marginalized consumers a pathway to a transparent financial market that meets their individual needs. Fintech companies play an essential role in shaping an inclusive banking culture that responds to the needs of low-income and minority consumers.

Innovation is a dynamic process in which banks and fintechs actively experiment with a wide range of services and products and try to find the right balance in the composition of market players. Congress has a duty to create a framework to ensure that consumers remain protected in the course of this dynamic process. Congress can take clear steps to protect consumers and restore their ability to hold innovators and abdicators responsible for their decisions.

This subcommittee should examine how to extend the authority of the CFPB to include oversight of the Community Reinvestment Act (CRA). Compliance with CRA is a crucial regulatory tool that allows regulators to hold lenders accountable while deepening lending in low-income communities. CFPB should not be a passive bystander in the CRA review process while managing the real effects of banking consolidation in affected communities. CFPB has unique insights into the consumer-centric lending practices of banking institutions, which should be considered in the review process for merger applications.

[15] Shoag, Daniel, The Impact of FinTech on Discrimination in Mortgage Lending (May 2021). Available at SSRN: https://ssrn.com/abstract=3840529 or http://dx.doi.org/10.2139/ssrn.3840529

Prepared Statement of Sarah Jane Hughes

for the Hearing on

"The Future of Banking: How Consolidation, Nonbank Competition and Technology Are Reshaping the Banking System"

Before the

Subcommittee on Consumer Protection and Financial Institutions

Chair, The Honorable Ed Perlmutter

Ranking Member, The Honorable Blaine Luetkemeyer

Vice Ranking Member, The Honorable David Kustoff

of the

Committee on Financial Services

Chair, The Honorable Maxine Waters

Ranking Member, The Honorable Patrick McHenry

United States House of Representatives

Washington, D.C.

September 29, 2021

The observations stated in this prepared statement do not reflect the views of the Trustees of Indiana University and have not been reviewed by representatives of Indiana University.

Introduction

Good morning, Chairman Perlmutter, Ranking Member Luetkemeyer, and honorable members of the Subcommittee on Consumer Protection and Financial Institutions of the Committee on Financial Services. It is a great honor to appear today to discuss how bank consolidation, non-bank competition, and technology are reshaping the banking system in the United States. I am grateful for the Subcommittee's kind invitation to join you.

Before moving to the topics slated for this hearing, I would like to introduce myself. My name is Sarah Jane Hughes. I am the University Scholar and Fellow in Commercial Law at the Maurer School of Law at Indiana University in Bloomington, Indiana. I have been a member of the faculty at the Maurer School since January 1989, focusing on teaching commercial law and the regulation of banks and other providers of financial services in the United States. During my time at Indiana University, I have written articles about banking regulation, payments law generally, the deterrence of money laundering and terrorism finance, foreign policy law enforcement through the federal government's sanctions laws and regulations, consumer credit and privacy, cybersecurity, national security, and cryptocurrencies. Prior to joining the faculty, I served for 14 years at the Federal Trade Commission, where I focused on consumer protection and consumer credit issues. The fields I teach and write about change constantly and command attention from the private sector as well as from Congress and regulators. I find these fields fascinating.

I will concentrate my comments on bank consolidation, the challenges consolidation poses for small towns and rural communities, how nonbank competition is changing banking, and the role that technology is playing in driving changes to banking services and availability, including the emergence of partnerships between insured banks and fintech companies and the new issues and benefit they may offer. I plan to address these issues in the order stated.

Bank Consolidation

The number of federally insured commercial banks declined from more than 14,000 in 1986 to 8,300 in 2000. By 2019, that number had declined to 4,519,[1] with 799 national banks remaining as of August 31, 2021.[2] This decline was due to several factors, most prominently consolidations through mergers and acquisitions as well as consolidations in several rounds because of resolutions of bank failures by the FDIC. Very few banks simply closed their doors of their own choosing, although if one drives through small towns in Indiana, for example, one can see beautiful vintage, former bank buildings, still displaying their Greek columns and architectural merit. Indeed, bank consolidation is not a new phenomenon in the United States. Many of the remaining commercial banks are community national banks or state-chartered banks that serve smaller communities.

The result of consolidations in commercial banks during the period following the Financial Crisis/Great Recession from 2007 to 2010 left many communities with no locally

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[1] Some of this information came from a fabulous tool published by the Federal Reserve Bank of St. Louis through 2018, and by regular reports from the Federal Deposit Insurance Corporation known as the FDIC Quarterly Banking Profile.

[2] Office of the Comptroller of the Currency, Financial Institution Lists, Aug. 31, 2021, https://www.occ.treas.gov/topics/charters-and-licensing/financial-institution-lists/index-financial-institution-lists.html.

owned banks – or even full-fledged branches of larger banks. Those that remained included both federally chartered community national banks and state-chartered community banks. Both types of banks continue to offer excellent services to their immediate communities, including loans to small businesses and individuals, but according to many news sources, they are challenged by the costs of technology and regulatory compliance. My family and I have had relationships with community national banks and state-chartered banks as well as with major national banks over more than 45 years. Several of these community-oriented banks serve Bloomington and its environs in south-central Indiana in Indiana's 9th Congressional District and neighboring areas.

In my family's 32 years in Bloomington, we saw a locally owned national bank be acquired by a strong regional bank, and in turn, that regional bank was acquired by one of the United States' largest banks. We also saw the entry to this market of a strong regional bank based in Ohio, branches of a state-chartered bank, and one *de novo* state bank sponsored by local business interests. We also had a savings and loan merge with another in-state association. If I missed mentioning any, it shows how hard it is to keep track of the changing environment in banking – even for someone interested in the field.

Emergence of Non-Bank Competitors and Their Business Models

Non-bank competitors to banks have been around for more than 100 years, but they have grown rapidly since the Big Three automobile manufacturers launched their own consumer finance arms. Additionally, other installment personal-loan, purchase-money-loan, mortgage lenders, and more recently, a new crop of non-bank lenders in the payday and title loan industries have emerged. For the most part, these providers have been subject to state licensure and supervision. Many of these state-licensed providers began in brick-and-mortar locations but, more recently, some have operated exclusively online.

Two other categories of non-bank providers include "industrial loan companies" (ILCs) and fintech companies. The ILCs have been in existence since the early part of the 20th Century and the latter are 21st Century innovators. As of March 31, 2020, the FDIC reported that there were 23 ILCs operating in five states.[3] This also represents a decline in the number from just prior to the Financial Crisis/Great Recession. Most ILC's employ business models in consumer lending or credit card operations – many to support the needs of their non-bank parent companies.

ILCs may not take retail deposits and must have obtained FDIC deposit insurance before they operate. Even though they obtain their charters from the States, the FDIC is their primary federal regulator. ILCs and their parents are not subject to consolidated supervision by the Board of Governors of the Federal Reserve System – one of the primary benefits of this type of otherwise state-chartered entity. This is largely because their parent companies are engaged in activities that are not banking or otherwise "financial in nature." States have expanded the powers of ILCs and industrial banks since the late 1980s so that they match the *lending* powers of commercial banks.[4]

It is hard to estimate how many fintech companies exist, but as of April 2021, the American Fintech Council (AFC) announced that it had more than 75 members. For the fintech company memberships, the AFC rules require having one year of operating history. Some of the members are large and well-known firms – nearly household names -- by now. Others are not yet

[3] Fed. Dep. Ins. Corp., Parent Companies of Industrial Banks and Industrial Loan Companies, 85 Fed. Reg. 17771, 17773 (Mar. 31, 2020) [hereinafter "Parent Companies Proposed Regulation"].
[4] *Id.* at 17772.

in that category. Fintech lenders that are members of the AFC must observe additional rules that include offering financial services products that

- "must not be characterized as something otherwise to avoid regulation,"
- are not "'payday' or 'high-cost installment loans as defined by the CFPB,"
- adhere if small business financing "to the responsible lending standards of the Small Business Borrower's Bill of Rights," and
- "advance standards of fairness and nondiscrimination."

Fintech companies generally offer longer loan periods and make larger loans than non-depository providers, such as payday or auto-title lenders, offer. In this respect, fintechs' average loans may be closer in size to smaller personal loans offered by credit unions and banks.

Among the more prominent fintech providers are Square, SoFi, Lending Club, and Varo. Of these Varo now holds a national bank charter, which it obtained *de novo*. Lending Club acquired the tech-friendly Radius Bank as of February 1, 2021, and renamed the bank LendingClub Bank, N.A. on July 1, 2021. Lending Club, the fintech company, is the largest personal lender in the United States. SoFi is not a bank. Square Financial Services operates as a Utah-chartered ILC as of March 2021. It had flirted with applications for a full national bank charter in recent years.

Fintech companies' technologies and specialty platforms offer cost savings that can be passed on to customers. They often have limited physical presences where their customers are – that is, they do not operate traditional branches or Main Street locations. They are not subject to the same reserve requirements that the Federal Reserve System requires of all national banks and state-member banks and are not governed by the Community Reinvestment Act. Many fintech lenders use algorithms to determine whether to make loans, how much to lend, and how much to charge loan customers.

Fintech companies are well-equipped through their proprietary technologies to bring new customers on board quickly and economically. They also must have technology facilities to meet federal AML/CFT and Customer-Identification-Program responsibilities. Unlike banks with branches, they do not need permission to move locations or to open or close locations.[5] They need different types of security, space, and equipment and must operate at high volumes with relatively few employees. They do not need permission to embark on new lines of business or offer innovative products, as national banks often do.

The nimbleness of fintech companies enabled them to process Payroll Protection Program (PPP) loans that Congress authorized in the March 27, 2020 CARES Act. Reports indicate that fintechs were able to supply PPP loans to many small and minority-owned businesses that lacked sufficient banking relationships to get PPP loans from insured commercial banks.

Many fintechs make small-business or consumer loans only when they have commitments from investors to fund specific loans. Thus, they are in some senses new-age "loan production offices" (but without the brick-and-mortar offices) that larger banks formerly had in areas of the nation where they were not allowed to situate or did not have branches. Loan production offices performed many of the upfront tasks involved with underwriting loans, but the final decision to lend came from the bank itself. Today, fintechs may need the concurrence of a

[5] The FDIC publishes its requirements for opening, closing, or moving "banking offices" at https://www.fdic.gov/regulations/applications/resources/offices.html. That site makes it clear that "loan production offices" are not "branches."

bank to which they hope to sell loans or, as noted above, commitments from investors to fund specific loans prior to the loan closing.

Many commercial banks use fintech vendors to help them perform certain tasks – and this is a promising avenue for bringing future innovations to commercial banks. This is particularly true for smaller commercial banks for which the cost of developing or acquiring some technologies can be significant. These technologies can help commercial banks reduce expenses associated with customer onboarding, fraud detection, and other risk-management tasks. These tasks are labor-intensive.

I spoke about three weeks ago to a CEO of a well-regarded small bank in the Midwest whom I had met at the Annual Payments Symposium sponsored by the Federal Reserve Bank of Chicago some years ago. He had specific concerns about the rising costs of processing checks that his customers still write in significant numbers. After a while, I asked if he had considered finding or creating with similarly situated banks a technology product that specialized in check-processing solutions. He had -- but he wondered if a consortium of small banks organizing to identify such a company and then using it would violate any antitrust laws. Then we discussed a "bank service corporation" (BSC) in which banks have been authorized to own stock since 1962 under 12 U.S.C. §§18 and 1861. The requirement is that the shares of the bank service corporation be owned by at least two banks. We agreed that it was worth considering.

We also discussed using a fintech vendor, which proved to be another route without the necessity of forming the bank service corporation or finding other banks to join in it. Both were plausible solutions that did not dispense with banks' duties to manage the risks of the solution. Additionally, both solutions entailed subjecting the BSC to the same types of examination by the banks' primary regulator as the banks would undergo themselves. Thus, in this conversation, we identified fintech companies as a means of making more efficient and effective traditional functions that banks carry. This conversation stopped short of certain types of "partnerships" between banks and fintech companies that have become prominent in discussions about the future of banking, particularly in the past few years.

Bank-Fintech Partnerships

Everyone attending this hearing knows that banks and fintechs want to operate in partnership with each other. There are benefits to both directions of such partnerships. The COVID-19 Pandemic may have increased the benefits of using technology provided by fintechs to generate, if not originate, loans. Opportunities to use fintechs to help with other functions exist, but the main focus of many fintechs is originating or servicing loans to consumers and small businesses.

Federal bank regulators have responded to the desire for bank-fintech partnerships by issuing regulations and guidance. Let me mention the most recent steps from federal bank regulators in reverse chronological order.

In August 2021, the Board of Governors, the FDIC, and the OCC issued "Conducting Due Diligence on Financial Technology Companies: A Guide for Community Banks." This Guide demonstrates several concerns that bank regulators have about these relationships. These are:

- The initial phase in which a bank collects and analyses "information to determine whether third-party relationships would support [the bank's] strategic and financial goals and whether the relationships can be implemented in a safe and sound manner consistent with applicable legal and regulatory requirements."[6] and

- The "scope and depth of due diligence performed by a community bank will depend on the risk to the bank from the nature and criticality of the prospective activity."[7]

The Guide offers alternative means by which this type of risk management may be performed by insured banks even when the prospective fintech vendor or partner is relatively new to the market. The Guide also makes clear that ultimate compliance with the legal and regulatory requirements imposed on banks – including consumer protection and safety-and-soundness requirements – remains the banks' responsibility.

In October 2020, the OCC published its final "National Banks and Federal Savings Associations as Lenders" Rule – known colloquially as the "True Lender" Rule.[8] The True Lender Rule was intended to resolve remaining questions about which entity – the chartered depository institution or their fintech partner -- originated specific loans and, consequently, whether the exportation of interest rates allowed to national banks and state-chartered banks under 12 U.S.C. §85 and 12 U.S.C. §1831d, respectively, was allowed – that is, whether federal or state interest-rate laws govern these loans. The Rule provided that lender is the bank that either (1) is named in the loan agreement as the lender or (2) funded the loan.[9] Whoever is the lender on this basis was the party responsible for compliance with federal laws for the loans.[10] The Rule also provided that "[i]f, as of the date of origination, one bank is named as the lender in

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[6] August 2021 Guide, at 1.
[7] August 2021 Guide, at 2.
[8] Office of the Comptroller of the Currency, National Banks and Federal Savings Associations as Lenders, 85 Fed. Reg. 68742 (Oct. 30, 2020) (codified at 12 C.F.R. §7.1031) [hereinafter True Lender Rulemaking].
[9] 12 U.S.C. § 7.1031(b).
[10] *Id.*

the loan agreement for a loan and another bank funds that loan, the bank that is named as the lender in the loan agreement makes the loan."[11]

As Members of this Subcommittee are aware, the True Lender Rule drew praise and criticism. On May 11, 2021, the Senate passed a resolution[12] to repeal the True Lender Rule under the Congressional Review Act,[13] which also enjoins subsequent promulgation of the same or a similar rule unless specifically authorized by a law enacted after the disapproval.[14] The House passed the resolution,[15] and the President signed it.[16] Thus, the opportunity that the Rule would have provided to fintechs is dead – unless this Congress or a subsequent Congress reauthorizes it specifically.

The second OCC is the "Permissible Interest on Loans That Are Sold, Assigned, or Otherwise Transferred"[17] ("Valid-When-Made Rule"), which was published on July 22, 2020. It was not subject to a Congressional Review Act resolution. The FDIC published its final companion rule on the same date.[18]

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[11] *Id.* § 7.1031(c).
[12] S.J. Res. 15, 117th Cong. (2021), https://www.senate.gov/legislative/LIS/roll_call_lists/roll_call_vote_cfm.cfm?congress=117&session=1&vote=00183 (Roll Call; Vote Summary).
[13] 5 U.S.C. §§ 801-808 (2020).
[14] 5 U.S.C. § 801(b)(2) (2020) (prohibiting reissuance in substantially the same form unless specifically authorized by a law enacted after the date of the disapproval of the original rule).
[15] S.J. Res. 15, 117th Cong. (2021), https://www.congress.gov/congressional-record/volume-167/house-section/page/H3100 (Cong. Rec.; Vote Summary).
[16] Remarks by President Biden Signing Three Congressional Review Act Bills, June 30, 2021, https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/06/30/remarks-by-president-biden-signing-three-congressional-review-act-bills-into-law-s-j-res-13-s-j-res-14-and-s-j-res-15/; https://www.whitehouse.gov/briefing-room/statements-releases/2021/06/30/bills-signed-s-j-res-13-s-j-res-14-s-j-res-15/.
[17] Office of the Comptroller of the Currency, Permissible Interest on Loans That Are Sold, Assigned, or Otherwise Transferred, 85 Fed. Reg. 33530 (June 2, 2020) (codified at 12 C.F.R. §§ 7.4001 and 160.110) [hereinafter Valid-When-Made Rulemaking].
[18] Fed. Dep. Ins. Corp., Federal Interest Rate Authority, 85 Fed. Reg. 44146 (July 22, 2020) (codified at 12 C.F.R. § 331.1-.4).

The True Lender and Valid-When-Made rules largely resolved the uncertainties experienced in secondary loan markets that were caused by a decision from the United States Court of Appeals for the Second Circuit, *Madden v. Midland Funding, LLC.*[19] The Valid-When-Made Rules clarified that assignees of bank-originated obligations may charge interest "permissible before the transfer … after the transfer."[20]

The OCC cited the National Bank Act authority to make loans, enter contracts, sell loans made, and transfer obligations under contracts made.[21] The power of assignees of contracts such as loan buyers to enforce terms, including interest rates on loans, was the issue in *Madden v. Midland Funding, LLC,*[22] which involved an assignee's efforts to collect consumer credit card obligations bought from a Delaware national bank. The interest rate allowed by the agreement under Delaware law exceeded the interest rate allowed under New York's usury law.[23] Thus, the Valid-When -Made Rule restored the rights of loan buyers to enforce loans they buy from national banks and federal thrifts as written. This is customary in contracts enforcement and an indispensable part of operating a market for loans originated by banks under Sections 85 of the National Bank Act and 1831d of the Federal Deposit Act.

[19] Madden v. Midland Funding, LLC, 786 F.3d 246 (2d Cir. 2015).
[20] Valid-When-Made Rulemaking, *supra* note 17, at 33530. The rule itself states: "Interest on a loan that is permissible under 12 U.S.C. 85 shall not be affected by the sale, assignment, or other transfer of the loan." 12 C.F.R. §§ 7.4001(e). The companion rule for federal thrifts is at 12 C.F.R. § 160.110(d) (citing 12 U.S.C. § 1463(g)(1)).
[21] *Id.* at 33531, citing 12 U.S.C. § 24 (Seventh) (2020).
[22] 786 F.3d 246 (2d Cir. 2015) (vacating the holdings on preemption and denial of class certification, finding that the District Court erroneously analyzed the preemption issue).
[23] *Id.* at 248.

The FDIC's Valid-When-Made rule provides rights to buyers of loans originated by state-chartered banks.[24] The FDIC relied on Section 27 of the FDI Act[25] to allow state banks to export interest at rates permissible in the state where the bank is located.[26] Seven States challenged it on August 20, 2020.[27]

Conclusion

Fintechs offer nimble organizational structures and bring new products to market fast. With the significant shift during the Pandemic to contactless payments and online processing of loan and credit card applications, fintechs helped many businesses obtain PPP loans and other financial services that consumers and small businesses needed.

Fintechs do not offer the same services as commercial banks offer. Fintechs rely on algorithms, not personal relationships, to judge applicants for their loans. They do not offer retail banking services that consumers and small businesses require, including cash services or certification of checks (which law students have needed for bar applications in the past). I mention cash services because they remain important to many types of businesses, including cannabis businesses, restaurants, farmers' markets, and local festivals that bring needed tourism income to many communities such as those in south-central Indiana.

Community national banks and state-chartered banks are lifelines for their respective communities. I am a passionate fan of both types of banks and would like to see Congress find

[24] Fed. Dep. Ins. Corp., Federal Interest Rate Authority, 85 Fed. Reg. 44146 (July 22, 2020) (codified at 12 C.F.R. 331.1-.4). For an explanation of how this rule relates to the OCC's Valid-When-Made Rule, see Nicholas J. Podsiadly, FDIC General Counsel Memorandum: Final Rule on Federal Interest Rate Authority, *passim* (June 25, 2020), https://www.fdic.gov/news/board/2020/2020-06-25-notice-dis-c-mem.pdf.
[25] 12 U.S.C. § 1831(d) (2020).
[26] *Supra* note 16, at 44146, 44158 (codified at 12 C.F.R. 331.4(a) (2020)).
[27] People of the State of Calif., et al. v. FDIC, Case No. 20-CV-5860 (Aug. 20, 2020).

ways to help these valuable community assets continue the roles they have been playing across the United States for more than 150 years.

I appreciate the invitation to appear before the Subcommittee today and I look forward to your questions, which I will try to answer. Thank you, Chairman Perlmutter, Ranking Member Luetkemeyer, and Members of the Subcommittee for your attention.

Testimony of
Desiree Jackson
Assistant Vice President for Treasury Management, Beneficial State Bank
Before the
U.S. House Subcommittee on Consumer Protection and Financial Institutions of the Committee on Financial Services
September 29, 2021

Good morning, Subcommittee Chairman Perlmutter and members of the committee. My name is Desiree Jackson. I am an Assistant Vice President for Treasury Management at Beneficial State Bank in Oakland, California and a proud member of the Communications Workers of America Local 9412. Last year my coworkers and I made history when we became the first group of bank workers to organize a union in over 40 years! And two days ago we ratified our first union contract.

I have worked in the banking industry for over 25 years, including 18 years at Wells Fargo, so I am excited to share my perspective on the future of our banking system.

Frontline bank jobs are stressful. We are under extreme time pressures and we know that mistakes can harm our customers. Whether or not a bank respects its workers' rights greatly impacts our stress levels. It is also a good predictor of whether a merger will impact us and our customers positively or negatively.

During my time at Wells Fargo, I worked in a call center as a customer service representative where I was responsible for opening customer accounts after they were sold.

When Wells Fargo bought other banks like Norwest Bank and Wachovia Bank, it made our workload more intense.

We had to do more with less. Our performance metrics got more excessive; meaning we had to complete all of our assigned work each day or we would get a talking to by our manager. We had to answer our phone by the second ring. Emails had to be responded to within two hours. And we had strict deadlines for opening customer accounts. But there was no opportunity to get raises even though the expectations of the job increased.

Managers pressured us to work as many hours as were necessary to complete our daily assigned tasks, like making sure every account was opened. They didn't care how many hours we worked because the bank misclassified us by turning us into salaried employees so they didn't have to pay us overtime.

I didn't realize I was being misclassified until Wells Fargo was caught in 2011 and settled litigation over violating wage and hour law.

While I benefited from the settlement, the intense metrics and work stress remained. I continued enduring the daily grind. After a couple more years, I started to miss hitting my metric goals because I had developed carpal tunnel injuries in my arms. I took some workers compensation leave.

But while I was on workers comp leave, Wells Fargo filled my position and told me that I did not have a job to come back to. After all my years of service helping customers, and helping the bank reach record profits, they just tossed me aside. I was not in a position to fight this powerful bank alone. I was so angry. And this was obviously a very stressful time for me and my family.

On top of that, departments closed when Wells Fargo bought or merged with other banks. People were laid off, instilling even more stress and fear in frontline workers.

Basically, Wells Fargo used mergers to cut staff, even if it meant getting rid of experienced staff who were skilled at serving the best interest of their customers.

This management style is all too common in the industry. It means that bank workers often experience huge stress and there are sometimes incentives for workers to take actions that would harm consumers. That's why I strongly support the Financial Services Worker Bill of Rights.

A Financial Services Worker Bill of Rights was recommended by the U.S. House Committee on Financial Services Majority staff report released on March 4, 2020, citing a study by the Kalmanowitz Initiative at Georgetown University, and I am pleased that this important legislation is now being introduced.

I want to highlight some specific problems that are prevalent at many large banks in the industry that the Financial Services Bill of Rights would help address, and in doing so would help ensure good jobs in the industry, strong protections against unfair, deceptive and abusive practices, and to ensure the safety and soundness of banks.

Many of the big banks relied on performance based pay metrics which incentivized predatory practices. The Wells Fargo fraudulent account scandal illustrated how big banks' unreasonable sales quotas harm both consumers and frontline bank workers. Frontline bank workers reported that a failure to meet their sales quotas resulted in lost pay and bonuses, bullying, retaliation and possible termination. Therefore, by keeping this system of aggressive sales goals in place, it was almost inevitable that a scandal like that--in which many workers broke the rules to meet those goals, harming consumers and the bank as a whole in the process--would take place. The

Financial Services Bill of Rights would prohibit the use of predatory sales goals so that frontline bank workers do not feel pressured to market products that are not in the interest of the consumers.

The relentless performance based pay metrics fostered an environment where workers feel like they cannot take a break, whether for medical reasons or to use the bathroom, for fear that they may not meet their quotas. Being deprived of a bathroom break can cause serious health problems for workers and it frankly would undermine someone's dignity. This legislation would mandate employee break and rest time so workers do not have to choose to be uncomfortable or risk health problems because their employer is depriving them of a basic human need.

The increased use of forced arbitration in the financial industry can cause real harm to frontline bank workers and consumers. Forced arbitration agreements and non-disclosure agreements, along with the fact that workers do not feel adequately protected by whistle-blower laws, means that bank workers are prevented from filing complaints or talking to government regulators when they see consumer abuse. By prohibiting forced arbitration in employment agreements, frontline bank workers will feel encouraged to speak up when they feel their rights have been violated and if they witness actions or protocols that may harm consumers.

This bill would also create incentives to reduce the enormous inequities and income inequalities that exist in banking by imposing a tax on financial institutions with a large CEO to median pay ratio.

By establishing a system for non-management employees to provide feedback to Federal financial institutions regulatory agencies conducting a supervisory examination, the Financial Services Worker Bill of Rights would help protect and empower everyday bank workers to speak out against the structural weaknesses that continue to threaten our financial system.

From my experience working in the banking industry, Federal regulatory examiners would benefit from frontline bank worker participation in the review of the safety and soundness of the banks that they oversee. This point of view has been put into practice by the Committee for Better Banks, which is a coalition of bank workers uniting to improve working conditions and raise standards throughout the financial industry, understanding that bank workers' conditions impact how consumers are treated. For example, I know that members of the Committee for Better Banks met with the Consumer Financial Protection Bureau to talk about predatory sales goals before the CFPB took action on Wells Fargo's fake accounts scandal. And after former Wells Fargo CEO Tim Sloan testified before this committee two and a half years ago, members of the Committee for Better Banks at Wells Fargo met with two Governors of the Federal

Reserve Board to share how their ongoing stressful working conditions continued to impact the safety and soundness of the bank.[1]

Having regulators meet on an ongoing basis with frontline bank workers would allow workers to bring these sorts of problems to regulators' attention in a timely way, hopefully putting a stop to abusive practices before they become major problems for consumers and the safety and soundness of banks.

A Financial Services Worker Bill of Rights would also strengthen and protect bank workers' right to unionize. At a recent hearing of the U.S. Senate Banking Committee, the CEOs of Bank of America, Citibank, Goldman Sachs, Morgan Stanley, JP Morgan Chase, and Wells Fargo all stated that they would not remain neutral if their employees wanted to unionize. And while some of their exact words may have obscured their response to the question from U.S. Senator Sherrod Brown, their message was heard loud and clear that they would oppose bank workers' attempts to organize. When asked whether he would remain neutral if employees at JPMorgan Chase attempted to organize, Jamie Dimon was succinct and direct in his response, an unequivocal "no".

I know from my participation with the Committee for Better Banks that bank workers want to organize for better treatment but many are scared and fearful that their bosses will retaliate against them.

Luckily, my experiences at Beneficial State Bank couldn't be more different from what I experienced at Wells Fargo, and from what most workers' experiences at other financial institutions are. Beneficial is a mission-driven bank, owned by a non-profit foundation, and is committed to serving communities that need access to financial services.

When it has acquired small banks over the last few years, they have been like-minded community banks, enabling us to serve more communities in need. No one lost their job and there was an open communication process with much better transparency; we held monthly bank wide meetings to explain what was happening. And now with our union contract, we will have regular labor-management meetings where we can discuss a range of issues, including how we can improve customer service.

I've also noticed that when mergers of bigger banks occur, Beneficial gets some of those customers because they are unhappy with their service at the big bank after the merger.

[1] "How Wells Fargo regulators and employees drove out its CEO", Reuters, Imani Moise and Pete Schroeder, April 9, 2019.

But the reality is, there has been too much consolidation in the industry, and I want to make sure that small, mission-oriented banks like Beneficial can thrive and not be swallowed up by predatory mega-banks. That's why I think that Congress should strengthen merger standards to ensure that mergers are in the public interest and improve wages and working conditions. The Bank Merger Review Modernization Act would require a more stringent review process for bank mergers, including directing regulators to look at the impacts of the merger on wages and working standards.

Meanwhile, online banking is creating more cashless banks and reducing the number of brick and mortar branches, threatening the livelihood of the 423 thousand bank tellers[2] in the country and possibly reducing access to banking for underserved consumers who can't utilize the newer technology.

From my 25 years of experience in banking, I think there is room to ensure that employees are taken care of when there are mergers or advances in technology, and that is through unionizing. Making sure frontline bank workers' rights are protected by empowering more of us to organize will not only reduce our unhealthy stress levels but it will be better for customers, better for our communities and better for our entire financial system.

That's why I'm committed to helping other bank workers organize. As part of CWA's Committee for Better Banks campaign, I've met with current Wells Fargo workers, as well as from Bank of the West (owned by the French bank BNP Paribas) and other big banks, who are fighting for better treatment, conditions and the right to form a union.

Thank you.

[2] BLS data 2020 - There are an estimated 423,570 bank tellers in the US

Testimony of

Jim Reuter

On Behalf of the

American Bankers Association

Before the

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Chairman Perlmutter, Ranking Member Luetkemeyer and members of the subcommittee, thank you for the opportunity to offer testimony today about the "Future of Banking: How Consolidation, Nonbank Competition, and Technology are Reshaping the Banking System." As a banker for over 34 years, this hearing could not be timelier given the changes underway in our industry. I am pleased today to speak not only on behalf of FirstBank and our 3,000 employees, but also on behalf of the American Bankers Association, which represents banks of all sizes and charters in every corner of the country, and the two million women and men who work at those banks and serve your constituents every day.

Founded in 1963, FirstBank has grown organically to more than 100 locations in Colorado and Arizona. We provide banking services to individual and business customers, and we are currently the largest bank headquartered in Colorado. We compete every day against banks and nonbanks, including credit unions. While our business is banking, everyone who works at FirstBank understands that our commitment to the communities we serve goes well beyond that. My bank, like many around the country, goes the extra mile in ways that many may not know. At FirstBank, our 300 bank officers sit on two to three nonprofit boards *each*, bringing support and leadership to hundreds of nonprofits in Colorado and Arizona. Ten years ago, we started a 24-hour online giving program to support nonprofits with a goal of raising $1 million dollars in 24 hours. In year one, we raised $8 million. Last year, when nonprofits were being stressed like never before, "Colorado Gives Day" raised over $50 million for more than 2,000 nonprofits in just 24 hours—showing that our "Banking for Good" tagline is more than mere words.

We also operate a multicultural banking center supporting more than 30 languages and cultures to ensure we meet the needs of all communities in our trade areas. In May 2021 we partnered with a local organization to seed a fund with $1 million that will provide down payment assistance grants for Black residents in our communities looking to buy a home. We know the level of Black homeownership in our markets is not on par with that of other members of our community, and we are putting our money and effort forward to change this outcome. I am also proud of the diversity of our team where more than half of our management positions are held by women leaders.

In addition to our commitment to the community, we are also an innovative bank offering mobile banking before many others and being the fourth bank in the nation to launch the Zelle person-to-person payment network. Our motto is to meet customers where, when and how they want to be met. That coupled with our "Banking for Good" mission is what has enabled FirstBank to be a successful community bank.

Banking: A Source of Strength to our Economy

Before we look to the future of banking, I'd like to reflect for a moment on the present and recent past. As top regulators such as Federal Reserve Chairman Jerome Powell and FDIC Chairman Jelena McWilliams have noted on multiple occasions, banks have been a source of strength to the country during the COVID-19 pandemic, providing critical financial support for the economy. America's banks took extraordinary steps to prioritize the health and safety of bank employees and customers, while ensuring that the banking system remained fully open and operational. Banks have maintained near record capital levels throughout the crisis despite the economic disruption. We have also absorbed a record flood of deposits as Americans relied on banks to safeguard their finances during these uncertain times as they always do.

Working in partnership with the federal government, banks delivered 70 percent of Paycheck Protection Program loans amounting to $800 billion—supporting tens of millions of jobs along the way. Banks also facilitated the electronic delivery of $654 billion in Economic Impact Payments, providing a critical link for consumers to access needed federal stimulus funds quickly and safely. At FirstBank, we were the number-one bank in Colorado for PPP loans, originating more than 20,000 loans that helped save over 120,000 jobs in our state. Like other bank CEOs around the country, I'm proud of the support our employees provided to customers and communities during a difficult time. We also realize the ongoing pandemic is not over, and many Americans are still struggling.

In response, ABA, alongside its member banks around the country, continues to prioritize initiatives that promote financial inclusion. Thanks to the efforts of banks and other stakeholders, the rate of those without a bank account had fallen to its lowest recorded level of 5 percent before the pandemic, according to the FDIC. And we're pleased to see research from the Federal Reserve that indicates that the unbanked rate—while still too high—has remained steady during the pandemic as banks have provided a range of relief to customers alongside government assistance programs. To further reduce the number of unbanked, ABA last year encouraged every bank in the country to offer a safe, low-fee Bank On-certified account designed expressly for those who have not previously been banked or who have exited the banking system. Banks across the country have answered that call, and the number of accounts has more than tripled since our initiative launched just under a year ago: approximately 150 certified accounts are available at nearly half of all branches nationwide in all 50 states, and the number continues to grow with more banks in the Bank On pipeline. Bank On is just one of many industry initiatives intended to expand access to the banking system and the economic opportunities that come with a bank account.

To sum up, we come to today's conversation with a healthy, robust banking industry ready to meet the needs of all Americans. But like all businesses in this country, both large and small, banks face challenges. As a resilient industry we are working to overcome those challenges and position ourselves to remain relevant well into the future.

Consolidation Is Likely to Continue

Bank consolidation is a long-term trend—in fact, it's been part of the conversation for as long as I've been in banking. Whereas we had 17,886 banks in 1984, we have 4,951 today. The rate of consolidation picked up after the financial crisis when the numbers of de novo banks formed to replace banks that had been merged or acquired slowed substantially.

We expect consolidation to continue for a variety of reasons. Principally, the need for scale is a reality: banks at every level of the asset ladder are seeking scale to invest in the ongoing digital transformation that has been reshaping our industry for the past three decades. Each bank must develop its own strategy to navigate this challenge. At FirstBank, our strategy has been to focus on organic growth without significant M&A, but other banks are taking different approaches. The primary drivers for whatever strategy banks choose are to drive growth and remain competitive while continuing to serve their communities.

Beyond the pressures of technological transformation, bank consolidation has likely been accelerated by certain policy decisions, including regulatory rules that require significant up-front and ongoing expenditures and result in disproportionate returns to scale. A new factor driving the decrease in the number of banks is the continuing credit union tax subsidy which credit unions are using to acquire tax-paying banks in unprecedented numbers. From 2018 through 2020, there have been more than 28 announced deals in which credit unions have acquired community banks. Credit unions' tax exemption allows them to pay above market for banks—a recent acquisition in Georgia saw the credit union pay an 80 percent premium—which may artificially increase the rate at which banks feel obliged to sell. It's important to note that these deals are essentially subsidized by taxpayers. We urge lawmakers to examine this troubling trend and carefully consider whether Congress really intended for credit unions to use their federal tax exemption to buy up tax paying banks.

In a healthy economic and regulatory environment, consolidation will be tempered by a robust pace of de novo bank creation. We are pleased that this committee recently approved ABA-supported legislation H.R. 4590, the Promoting New and Diverse Depository Institutions Act, which requires federal banking regulators to conduct a study about the challenges faced by proposed depository institutions, including proposed minority institutions, seeking de novo depository charters. We've been pleased to see signs of life in the de novo sector in the past few years. It is worth noting that much of the investment in the financial sector over the past two decades has gone into nonbank fintech firms. We believe this is due in part to differential regulatory treatment that has in many cases led investors to believe that nonbanks will be more profitable and have a higher growth potential than banks over time.

Despite bank consolidation, banking is still a healthy, diverse and highly competitive industry that helps to propel the U.S. economy every day. Bank employment has held steady over time at two million women and men. Even though traditional teller positions and paperwork-heavy jobs in loan processing have declined, banks have hired new armies of technologists, cybersecurity experts, developers and data analysts. At FirstBank, for example, we have more than 400 people in our information technology unit, up from 250 five years ago. A fair number of those started as tellers or in other junior positions at the bank and were promoted from within in keeping with our corporate culture. In addition, our annual spend in IT has increased from $53 million a year in 2017 to over $110 million.

Through a potent blend of technological innovation and in-person branches, banks continue to provide service to virtually all U.S. communities. According to ABA research, the vast majority of U.S. households live near a wide selection of bank branches—with the average American living within commuting distance of 25 branch locations. Technological innovation has also rapidly transformed the way Americans bank. Today, Americans increasingly rely on digital channels to access banking services. More than a third (34 percent) of American households used mobile channels as their primary method of accessing bank accounts in 2019, according to the FDIC, up 18.4 percentage points from 2017. At FirstBank, almost 90 percent of our accounts are enrolled for mobile banking, with the average customer logging in 17 times per month.

Customers recognize and appreciate bank investments in improving digital access, with 84 percent "strongly" or "somewhat" agreeing that innovation and technology improvements by banks are making it easier for all Americans to access financial services.

Nonbanks and Banks Likely to Converge on Level Ground

Meanwhile, as the banking industry consolidates, many of banks' fiercest competitors have emerged outside the regulated banking space. Banks face a range of competitors and disruptors in the financial marketplace, including tax-advantaged lenders like credit unions and the Farm Credit System, monoline fintech firms, nonbank payment providers and decentralized finance technologies like cryptocurrency. Today, banks are even competing with large technology firms.

Despite this aggressive competition, only banks offer the full financial services "bundle" of insured deposits that fund consumer and commercial loans, paired with access to the payments system. With this product bundle comes a robust set of consumer protections and regulatory supervision. Banks are subject to safety and soundness supervision, regulatory capital and liquidity requirements, consumer protection rules, and affirmative obligations to demonstrate their service to their local areas via the Community Reinvestment Act.

Many nonbank competitors have business models that rely on a kind of regulatory arbitrage in which they can offer one or several aspects of the banking bundle while avoiding the full banking regulatory framework. We see this clearly in the rise of payments charters or "special purpose national bank charters" that would aim to provide payments system access to companies that—because they do not hold insured deposits or do not lend—would not be subject to the same regulations as banks. In essence, they want a seat at the dinner table but without having to eat their vegetables.

We believe there should be a high bar for access to the payments system. Twenty years ago, in the days after the 9/11 attacks, we learned just how critical regulated institutions are to payments. At that time, check clearing—managed by the Federal Reserve Banks—involved checks being shipped across the country via overnight airmail delivery. With U.S. airspace closed for several days and checks unable to be processed, the Fed provided credit on checks on their usual availability schedule. This was only possible because the Fed supervised the parties participating in the check clearing system and knew they would have sufficient liquidity to cover the checks. In short, supervision and high standards built up trust. We should remember that principle today as the Fed considers what entities may access our modern digital payments system.

Speaking of trust, consumers trust banks and the products they provide. According to Morning Consult research commissioned by ABA, nearly half of Americans trust banks more than any other company to keep their data safe, compared to just 12 percent who said the same for nonbank payment providers. Fifty-six percent of Americans say they prefer to receive financial services from a bank versus just 17 percent who said they would prefer to bank with the financial services division of a technology company.

Cryptocurrencies like bitcoin were designed explicitly to disrupt the banking business model and disintermediate them—allowing for "trustless" finance. Ironically, consumers trust banks *so much* that when they want to access crypto, they would rather do so through their banks. The fintech firm NYDIG surveyed bitcoin holders and found that 81 percent of them would move their bitcoin to a bank if it offered secure storage.

One reason consumers trust banks is that they know their personal data is secure. Banks are subject to robust privacy requirements via the Gramm-Leach-Bliley Act. Nonbank fintechs are not subject to the same requirements—and they may not have the same incentive to protect customer data. In fact, access to consumer transaction data may be the very reason large tech companies are interested in the payments space. Consistent national standards for safeguarding consumer data will help maintain Americans' trust in the payments system. The stringent rules for banks should be applied to others looking to offer bank-like services.

The same goes for compliance with our consumer protection laws. While nonbank fintechs are generally covered by the same consumer protection laws and regulations as banks, too many are not examined by the CFPB to ensure compliance on an ongoing basis. For retail consumers, that's a big hole in the consumer protection umbrella, and one they cannot see. Experience demonstrates that consumer protection laws and regulations must be enforced in a fair and comparable way if there is to be any hope that the legal and regulatory obligations are observed.

The CFPB is writing rules to implement section 1071 of the Dodd Frank Act, which will require both banks and nonbank fintech lenders to submit data on lending to women and minority-owned small businesses. While banks will be closely supervised for compliance, fintech lenders will not. That's why ABA recommends that Congress give the CFPB authority to supervise nonbank commercial lenders for compliance with the small business lending data collection once the rules have been finalized.

Similarly, ABA has repeatedly urged the CFPB to exercise its existing authority to establish a supervisory program for nonbank consumer installment lenders and for data aggregators. Dodd-Frank Act Section 1024 authorizes the bureau to define the "larger participants" in a particular market for consumer financial products or services that will be subject to regular examination to the bureau. Establishing accountability across all providers of comparable financial products and services is a fundamental mission of the bureau. Congress should call on the CFPB to write these larger participant rules and begin examining these fintechs so the bureau can better monitor—and react to—risk to consumers in the rapidly evolving marketplace.

Ultimately, we believe the banking bundle continues to offer durable and exceptional value both to consumers and to the institutions that provide it. All else being equal—policymakers should treat nonbanks that want to engage in financial activities the same way they would treat banks—we expect to see growing bank-fintech convergence over time. As nonbank fintech companies have grown, many have realized the benefits of the banking bundle and have sought to acquire banks, like Lending Club, or charter their own banks, like Square. Meanwhile, banks of all sizes have acquired fintechs to plug innovative technology into their stacks and access top talent.

Should policymakers provide a level playing field that regulates activities, not charters, and minimizes opportunities for regulatory arbitrage, we expect this convergence will continue as the value of the banking bundle becomes ever clearer.

Technology and the Future of Banking

To fuel banks' aggressive competition, we as an industry have continued to invest in cutting-edge technology and partner with startups to deliver the latest digital tools. It's become a truism to say that COVID-19 has only accelerated an ongoing digital transformation that has already affected the way all of us do business, but it certainly remains true. Banks will continue to provide cutting-edge digital services, and we expect that many banks will continue to maintain in-person footprints to serve all clients in the way they prefer.

One of the most important aspects of this transformation is the investments we as an industry are making in new core infrastructure—the underlying ledger technology that all banks need to operate. While banks report that the large core technology providers have stepped up their game, there is an array of innovative cores, many of which are offering cloud-based solutions that support digital acceleration and rapid product deployment.

At FirstBank, we are piloting a new core designed by Finxact. It uses the latest cloud technology and positions us for real-time transactions and for future competition with all comers, and it builds on our commitment to innovation. We, like other banks, are leading the development of instant payments solutions. As a Zelle early adopter, we now see almost 7 million instant Zelle transactions per year. I've served on the Fed's Faster Payments Task Force, and FirstBank was also an early adopter of the Clearing House's RTP network for real-time payments. We are also piloting the Federal Reserve's FedNow system, which will follow RTP as a real-time payment option in the coming years.

ABA believes that the most innovative technology will continue to come from private-sector leadership. Real-time payments were available through banking industry innovation long before they will be available through a government-developed solution.

This history is why we firmly oppose efforts to create direct consumer accounts at the Federal Reserve (known as "FedAccounts") or to revamp the U.S. Postal Service to become a consumer bank. There is no reason to expect that either FedAccounts or postal banking would accelerate innovation, and many believe they would ultimately inhibit innovation. The last time I checked, the Federal Reserve already has significant responsibilities overseeing the nation's economy and regulating the banking sector. Asking it also to manage every American's bank account—effectively destroying the banking system that has served the nation well for so long—would be a tragic mistake that could do real damage to the U.S. economy.

Likewise, after the operational problems of the past two years and its philosophy of cutting costs by cutting services, the Post Office does not appear well-positioned to deliver banking services. I doubt Americans would like to see their banking access go away one or more business days per week, as USPS has proposed for first-class mail delivery.

Similarly, we have seen increased focus on whether the U.S. should issue a central bank digital currency. The debate on Central Bank Digital Currency (CBDC)is not about whether we should issue a "digital dollar," as the dollar is largely digital today. The question is whether consumers should be able to hold a direct liability of the central bank.

Proponents of CBDC are driven by laudable goals that include financial inclusion and innovation. Unfortunately, CBDC is not a single proposal and refers instead to a wide range of proposals with varied potential designs, each with specific costs and benefits. The policy debate today too often ignores the tradeoffs required to achieve any one of these desired outcomes if they are achievable at all. Importantly, all CBDC designs would take the money currently held on bank balance sheets and place it directly on that of the Federal Reserve. Given the severity of these tradeoffs, we do not currently see the use case for a CBDC in the United States.

If implemented, all these ideas would drain deposits out of private-sector banks and undermine the value banks deliver to consumers through convenient funds access and loans to support local economic growth. Ultimately, these approaches would centralize financial decisions in Washington and put at risk the financial inclusion enhancements we've seen over the past several years. Policymakers should instead promote solutions like Bank On accounts, which welcome all consumers into the regulated banking system and help to build a solid foundation for economic growth.

Conclusion

We believe that the future calls for banks of all sizes to remain at the center of consumers' and businesses' financial lives and to continue to provide the lifeblood of the U.S. economy. Despite challenges, we believe the future of banking is bright, provided the policy environment continues to support growth and closes gaps that promote regulatory arbitrage and put the financial system and consumers at risk.

At FirstBank, we hire 50 management trainees per year who will rise in the ranks over their careers. As I look at these millennial and Generation Z professionals, I'm optimistic about the future of our industry. I see their extraordinary excitement about the things we do for our communities. They want to make a difference, and they know that working at a bank gives them that opportunity. I'm eager to see what they will accomplish.

Thank you for the opportunity to testify. I look forward to answering your questions.

AMERICAN FINANCIAL SERVICES ASSOCIATION

September 27, 2021

The Honorable Ed Perlmutter
Chairman
U.S. House Subcommittee on Consumer
Protection and Financial Institutions
Washington, D.C. 20515

The Honorable Blaine Luetkemeyer
Ranking Member
U.S. House Subcommittee on Consumer
Protection and Financial Institutions
Washington, D.C., 20515

Dear Chairman Perlmutter and Ranking Member Luetkemeyer:

On behalf of the American Financial Services Association (AFSA), I am writing today in advance of your hearing, "The Future of Banking: How Consolidation, Nonbank Competition, and Technology are Reshaping the Banking System."

Founded in 1916, the American Financial Services Association (AFSA) is the national trade association for the consumer credit industry, protecting access to credit and consumer choice. In 1971, AFSA merged with the American Industrial Bankers Association, an organization of industrial banks, thrift and loan companies, and sales finance companies, and we are proud to continue to represent those banks. We appreciate the Committee's interest surrounding the regulatory oversight of industrial banks and hope to provide clarity regarding these types of sound financial institutions.

Industrial banks are Federal Deposit Insurance Corporation (FDIC)-regulated depository institutions chartered under the laws of Colorado, Utah, California, Nevada, Hawaii, Indiana, and Minnesota. Twenty-three industrial banks are currently in operation with over $140 billion in total assets.

Industrial banks are subject to the same banking laws and are regulated in the *same* manner as other depository institutions. Additionally, they are supervised and examined *both* by the states that charter them and by the FDIC. They are subject to the same safety and soundness, consumer protection, deposit insurance, Community Reinvestment Act, and other requirements as other FDIC-insured depository institutions.

The current discussion draft ignores this longstanding success and would require applicants for new industrial banks charters, who are already state and federal charted—to require a 2/3 vote by the FDIC directors for approval.

The discussion draft also would subject parent companies of existing industrial banks to supervision by the Federal Reserve Board. Most owners of industrial banks are exempt from Federal Reserve Board supervision as bank holding companies. Similar Bank Holding Company Act exemptions apply to thousands of institutions not owned by other companies, and to financial institutions that do not offer a full range of banking services, such as credit card banks, Edge Act banks, grandfathered non-bank banks, and trust banks.

Forcing existing parent companies—which include major automobile manufacturers and other diversified companies—under Fed control accomplishes nothing except lead these companies to exit the banking arena.

Though not required to be regulated as federal bank holding companies, owners of industrial banks are not "unregulated." Indeed, they are subject to many of the same requirements as bank holding companies, such as strict restrictions on transactions with their bank affiliates. They are regulated under state law, they are subject to examination by the FDIC, and to "prompt corrective action" and capital guarantee requirements if the banks they control encounter financial difficulties.

These exemptions benefit bank customers by introducing additional competition into the marketplace, without increased risk to the deposit insurance system. Industrial banks, which have existed since 1910, evolved from Morris Plan Banks, consumer lending institutions organized at a time when commercial banks generally did not make consumer loans and predate the formation of both the Federal Reserve Board and the FDIC.

During the past five decades, industrial banks have compiled among the best records of capitalization and profitability of any group of banks in the nation, and they represent a sector of the financial services industry that should be encouraged to grow.

Finally, the discussion draft includes a new GAO study of industrial banks. While we believe this is unnecessary, AFSA notes GAO studies in 2005[1] and 2012[2] found no reason to change the existing regime for industrial banks.

We appreciate your time and the opportunity to provide insight into the regulatory oversight of industrial banks under your committee's jurisdiction. Should you need additional information or have any questions, please feel free to contact me at cwinslow@afsamailorg or (202) 776-7300.

Sincerely,

Celia Winslow

Celia Winslow
Senior Vice President
American Financial Services Association

[1] 1 U.S. Government Accountability Office. 2005. Industrial Loan Corporations: Recent Asset Growth and Commercial Interest Highlight Differences in Regulatory Authority. GAO-05–621. Washington D.C.: Government Accountability Office.
[2] U.S. Government Accountability Office. 2012. Bank Holding Company Act: Characteristics and Regulation of Exempt Institutions and the Implications of Removing the Exemptions. GAO-12–160. Washington D.C.: Government Accountability Office.

BANK POLICY INSTITUTE

Statement by the Bank Policy Institute

Before the U.S. House Committee on Financial Services Subcommittee on Consumer Protection and Financial Institutions
"The Future of Banking: How Consolidation, Nonbank Competition, and Technology are Reshaping the Banking System"

September 29, 2021

Chair Waters, Chair Perlmutter, Ranking Member McHenry, Ranking Member Luetkemeyer and Members of the House Financial Services Subcommittee on Consumer Protection and Financial Institutions:

The Bank Policy Institute welcomes the opportunity to provide comments on the hearing titled *The Future of Banking: How Consolidation, Nonbank Competition, and Technology are Reshaping the Banking System.*

On August 20th, the Bank Policy Institute published a research note addressing many of the important issues covered by this hearing. The note, *Bank Merger Applications in Law and Practice* by BPI staff Paul Calem and Gregg Rozansky, addresses the robust existing regulatory process for bank mergers. Areas considered by the agencies when reviewing merger and acquisition applications include:

1. The convenience and needs of the communities to be served and the subject banks' record of compliance with the Community Reinvestment Act;
2. The effectiveness of the applicant in combating money laundering;
3. The financial resources and prospects of the applicant;
4. The managerial resources and prospects of the applicant; and
5. Risks to the U.S. banking or financial system (financial stability)

The attached note delves deeper into this process.

Thank you for considering our views.

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Bank Merger Applications in Law and Practice

Aug. 19, 2021

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With the recent issuance of an Executive Order by President Biden on promoting competition in the American economy, questions about the credibility of the regulatory approval process governing bank mergers have come to the forefront. Regarding banking, the Executive Order calls on the Department of Justice in consultation with the federal banking agencies to review existing guidelines on bank mergers. This directive reflects concerns expressed recently by some lawmakers and academics who have accused regulatory agencies of "rubber stamping" mergers that may erode competition, harm consumers or pose risk to the financial system in a stress event.[1]

This note reviews the regulatory approval process for bank mergers, with illuminating references to approval orders from many of the most prominent bank mergers and acquisitions that have occurred over the past 15 years and to findings from Federal Reserve and other research studies. The facts presented demonstrate not a rubber stamp but rather a deliberating, rigorous process. Time and again, the process includes *de facto* minimum eligibility standards to even file an application and often results in the applicants being encouraged to withdraw the application or, particularly when large banks merge, required to divest acquired assets.[2]

THE REGULATORY APPROVAL PROCESS FOR BANK MERGERS

Bank M&A transactions are typically reviewed by the U.S. Department of Justice (DOJ) from an antitrust perspective and by the relevant federal bank regulatory agencies from that perspective as well as respecting other criteria established in banking laws and regulations.[3] The DOJ has independent authority to prevent the consummation of a bank merger irrespective of whether it has received approval from the appropriate federal banking agency.[4]

All proposed bank M&A transactions require a regulatory application or prior notice. While bank mergers are subject to the same antitrust laws as any other corporate combination –

[1] See Leah Nylan, "Bank mergers come into Democrats' antitrust crosshairs," *Politico* 4/19/2021.
[2] For significant merger transactions, regulators, including the Federal Reserve Board, typically publish an analysis of factors influencing the regulator's decision with respect to the application. For example, transactions approved by the Federal Reserve Board result in a published approval order accessible on the Federal Reserve Board website.
[3] The Bank Holding Company Act ("BHCA"), Bank Merger Act ("BMA") and other federal statutes and their implementing regulations prescribe the processes for filing these applications as well as the specific criteria under which applications are evaluated. The Federal Reserve is the banking agency responsible for reviewing applications to acquire bank holding companies, banks and certain nonbank financial institutions under the BHCA. To expedite the review and approval process, the Federal Reserve's Board of Governors delegates approval authority to the relevant regional Reserve Bank for applications that pass certain initial screens (i.e., those applications for less complex transactions). These screens include those that indicate the likelihood of any competitive harm associated with a transaction.

Under the BMA, which applies to merger transactions involving insured depository institutions, the primary federal regulator of the depository institution (i.e., the Federal Reserve, the OCC or the FDIC, as the case may be) that survives the transaction is the agency responsible for the application.
[4] See, for instance, "How do the Federal Reserve and the U.S. Department of Justice, Antitrust Division, analyze the competitive effects of mergers and acquisitions under the Bank Holding Company Act, the Bank Merger Act and the Home Owners Loan Act?" Board of Governors of the Federal Reserve System.

the Clayton and Sherman Acts – bank M&A transactions are also subject to an industry-specific statutory and regulatory framework. Thus, in addition to the competitive impact of the transaction, there are five specific criteria under which bank mergers and acquisitions are evaluated for approval by the applicable bank regulator:

i. The convenience and needs of the communities to be served and the subject banks' record of compliance with the Community Reinvestment Act;
ii. The effectiveness of the applicant in combating money laundering;
iii. The financial resources and prospects of the applicant;
iv. The managerial resources and prospects of the applicant; and
v. Risks to the U.S. banking or financial system (financial stability)

Banking organizations that have identified a specific acquisition target frequently discuss the transaction with their bank regulators in advance of any proposed transaction announcement.[5] An important purpose of the pre-filing meeting is to discuss the contents of the application including key issues that the regulator would like the applicant(s) to address in the application. In many cases, organizations determine not to file an application based on feedback provided during pre-filing meetings – or, otherwise, based on feedback from the bank's examiners or simply a recognition of the minimum standards employed by the agencies in approving applications – rather than risk having to withdraw the application later or having it denied. This is especially the case where a bank does not meet certain objective approval criteria highlighted in regulatory guidance such as the Federal Reserve's Supervision and Regulation (SR) Letter 14-2 including a composite CAMELS rating of 1 or 2, a "management" rating of at least a 2 or a Community Reinvestment Act rating of at least "satisfactory."

It is also not uncommon for an application to be withdrawn after it has been filed. Withdrawals often happen after the agency staff has informed the applicant that a significant issue exists that likely would preclude an approval recommendation by agency staff.

According to Federal Reserve data, from 2011 to 2021, approximately 10 percent of 2,352 bank merger and acquisition applications were withdrawn.[6] The Federal Reserve publicly reports that many of these applications were withdrawn due to significant issues that would have resulted in Federal Reserve staff recommending withdrawal.[7] For example, the Federal Reserve reported that of the 19 proposals withdrawn in the second half of 2020, 12 proposals were withdrawn by the applicants after consultation with Federal Reserve staff.[8]

Once filed, an application for merger or acquisition is subject to extensive review by the appropriate regulatory agency. The time from formal filing of an application to merge with or acquire another institution to the approval decision typically exceeds 40 days, according to Federal Reserve data. Especially in cases that receive adverse public comment, the median time between filing and approval of M&A applications with the Federal Reserve has ranged between three and almost seven months in the years 2017 through 2020.[9] In the second half of 2020,

[5] See "Implementation of a New Process for Requesting Guidance from the Federal Reserve Regarding Bank and Nonbank Acquisitions and Other Proposals", Board of Governors of the Federal Reserve System, SR 12-12, dated July 11, 2012.
[6] See "Board of Governors of the Federal Reserve System: Semiannual Reports on Banking Applications Activity" (federalreserve.gov) (providing information regarding the applications filed by banking organizations and reviewed by the Federal Reserve as of the most recent reporting period ending on June 30 and December 31 of each calendar year). The most recent Federal Reserve Semiannual Report on Banking Applications Activities covers applications activity from July 1 to December 31, 2020. See also "Enhancing Transparency in the Federal Reserve's Applications Process", Board of Governors of the Federal Reserve System, SR 14-2/CA 14-1, dated February 24, 2014.
[7] See id.
[8] See id.
[9] See id.

M&A proposals that did not receive adverse public comments were approved on average in 67 days, versus an average of 232 days for the four M&A proposals that received adverse comments.

Competition analysis. The guidelines applied by the DOJ to bank mergers have more restrictive concentration thresholds than the Horizontal Merger Guidelines that the DOJ and FTC have used since 2010 to review mergers in any other industry. [10] As is the case with any industry, the DOJ (and the banking agencies) calculate the implied change in the Herfindahl-Hirschman Index (HHI), a commonly accepted measure of market concentration. In the bank M&A context, the HHI measures the extent to which deposits are concentrated at a small number of banks. [11] An increase in the HHI of more than 200 points in conjunction with a post-merger HHI exceeding 1,800 in any relevant banking market yields a presumption of competitive harm. [12] This contrasts with every other industry for which, since 2010, the DOJ has applied a more permissive 200/2,500 HHI standard.

It is straightforward for the parties to a prospective merger or acquisition to calculate the effect of the transaction on the HHI in each relevant geographic area. Banks and their merger counsel will do so as part of their due diligence before moving forward on the transaction. Thus, generally they do not file an application when the HHI threshold would be violated for many markets, or they file expecting that they will be required to divest some branches. In other words, they make decisions and judgments based on the rules laid out beforehand.

Any market where competitive harm is presumed becomes subject to closer scrutiny by DOJ and/or the regulatory agency conducting the antitrust review of a proposed transaction. Mitigating factors may come into play, such as significant competition from credit unions that make the market more competitive than was indicated by the banks-only measure, or the merger may be conditioned on divestiture of branches to limit the increase in the HHI. Furthermore, and importantly, federal and state laws cap the size of an institution resulting from a bank merger. These include state-level deposit caps that, at a minimum, prohibit banks from gaining more than 30 percent of the federally insured deposits in any state, and a national deposit cap of 10 percent that applies to interstate transactions. Section 622 of the Dodd-Frank Act also sets a national liability cap in bank M&A transactions. As a result of the statutory caps, the very largest banking institutions are effectively enjoined from engaging in sizeable bank M&A activities.

Federal Reserve Board orders are accessible online for 45 M&A transactions since 2005 that are associated with bank holding companies that today have at least 50 billion dollars in assets; these are listed in Appendix 1. An examination of these orders corroborates that banks avoid transactions that would likely raise competitive issues, and regulatory scrutiny of proposed transactions is rigorous.

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[10] See "Bank Merger Competitive Review -- Introduction And Overview" (1995) (justice.gov)

[11] The HHI is calculated as the sum of squared market shares in a local banking market. Generally, the deposits of all institutions with a commercial bank charter receive 100 percent weight and the deposits of all institutions with a thrift charter (i.e., savings banks and savings and loan institutions) receive 50 percent weight in computing market shares for initial screening of competitive effects. However, in the context of conducting closer scrutiny, the HHI may be recalculated with 100 percent thrift inclusion or with 50 percent inclusion of credit union deposits, if this is seen as appropriate based on an analysis of the banking activities of these competitor institutions.

[12] The concentration thresholds applied in the competitive test for bank mergers have been unchanged since 1985 despite significant evolution in the competitive landscape in banking. In the current competitive environment, banks face increased competition on a national scale, especially via FinTech firms and online banking, across all traditional banking product segments. Moreover, availability of new financial data sources and analytics promotes competition in banking markets, especially in the areas of consumer and small business credit. Recognizing that the current standard may have become outdated, the DOJ in September 2020 put forth a request for comment on updating bank merger analysis for consistency with "new competitive elements in the financial sector." The Bank Policy Institute's response to this request details how the competitive environment has changed and why the concentration thresholds for banking mergers should be the same as for other industries.

Most of the transactions, simply put, raised no competitive issues. The combining institutions operated in different geographic markets, or the calculated effects on market concentration were well within the acceptable range as specified in the DOJ guidelines.

In a quarter (11) of the merger cases on this list, approval was conditioned on branch divestitures. The merging institutions were required to divest branches in some geographic markets as a means of limiting their post-merger market share or precluding market dominance.

In three other cases, an enhanced analysis of potential competitive effects was conducted in response to increases in market concentration exceeding DOJ thresholds, although approval in these cases was not conditioned on divestures.[13] In these cases, as well as in several that required divestitures, key mitigating factors were identified and assessed to be consistent with approval of the merger.

Key mitigating factors discussed include significant competition from credit unions and the attractiveness of a market for entry of new competitors. Notably, empirical studies find evidence that certain factors make a local banking market attractive for entry, which in turn can have procompetitive effects.[14]

Further confirmation of the strength of the merger review process is demonstrated in a 2018 study from the Federal Reserve Bank of St. Louis examining market concentration trends over the period 1994 through 2017.[15] As seen in the chart below, reproduced from that study, urban banking markets have not become less competitive over time. As of 2017, about 28 percent of urban markets were highly concentrated, roughly the same as in the latter half of the 1990s.[16]

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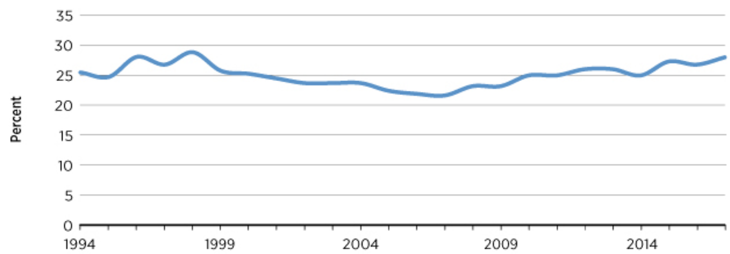
[13] These were PNC Financial Services Group / Mercantile Bankshares Corporation; Mitsubishi UFJ Financial Group / Pacific Capital Bancorp; and First Horizon National Corporation / Iberiabank.

[14] Factors identified as making a market attractive for entry in these studies and by the regulatory agencies in their merger reviews include market growth and past entry. See, for example, Robert M. Adams and Dean F. Amel, "The Effects of Past Entry, Market Consolidation, and Expansion by Incumbents on the Probability of Entry in Banking," *Review of Industrial Organization* 48 (2016) pp. 95-118. Entry in particular may enhance availability of small business credit, as documented by Allen N. Berger, Seth Bonime, Lawrence G. Goldberg, and Lawrence J. White, "The Dynamics of Market Entry: The Effects of Mergers and Acquisitions on Entry in the Banking Industry," University of South Carolina Scholar Commons, October 2004.

[15] See Andrew P. Meyer, "Market Concentration and its Impact on Community Banks," Federal Reserve Bank of St. Louis *Regional Economist*, April 12, 2018.

[16] In contrast, most rural markets have long been highly concentrated. The Federal Reserve Bank of St. Louis study finds that the percentage of rural markets that are highly concentrated ranged between 85 and 87 percent during 1994 through 2012. It rose marginally after 2012, reaching 89 percent as of 2017. This increase likely reflects a decline in the number of banks in rural markets due to branch closings among community and regional banks.

Percentage of Urban Banking Markets that Are Highly Concentrated



SOURCES: Federal Deposit Insurance Corp. and author's calculations.
NOTES: Highly concentrated markets are those banking markets with a Herfindahl-Hirschman Index greater than 1,800. Under Department of Justice guidelines, mergers within these markets generally require greater antitrust scrutiny.

■ FEDERAL RESERVE BANK OF ST. LOUIS

The convenience and needs of the communities to be served and the subject banks' record of compliance with the Community Reinvestment Act. The primary convenience-and-needs factor is the parties' record of performance under the Community Reinvestment Act. Convenience and needs considerations also include the parties' record of compliance with fair lending statues and consumer regulations.[17]

As stated in the Federal Reserve's Supervisory Letter 14-2, "proposals involving institutions with less-than-satisfactory consumer compliance ratings or other significant consumer compliance issues face barriers to approval and have been discouraged." Institutions with less-than-satisfactory CRA ratings are on notice not to file M&A applications and on the infrequent occasions that they do, face a major impediment to approval. Thus, for instance, all banks associated with the 45 M&A transactions listed in Appendix 1 were rated either satisfactory or outstanding (i.e., one of the two highest CRA ratings given by the bank regulatory agencies) in their most recent CRA examination, with the lead bank of the acquirer rated outstanding in most cases.[18]

Even then, convenience and needs evaluations consider more than just the CRA rating. For instance, a bank's community reinvestment activity after its most recent exam is another factor considered. For example, with CIT Group's 2015 acquisition of IMB (the parent company of OneWest Bank), the regulatory agencies paid much attention to weaknesses in OneWest's CRA compliance program, even though it had most recently been rated satisfactory and was the *acquiree*.[19] The acquisition was approved only after a revised CRA plan (with input from

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[17] Moreover, bank M&A transactions are subject to public notice requirements to allow stakeholders outside of the bank regulatory community and the DOJ to review and comment upon applications, especially whether the applicants meet the needs of their communities. In the case of larger transactions, the agencies often hold public meetings to receive feedback from the community.
[18] In 29 of these cases, the lead bank of the acquiring institution had been rated outstanding.
[19] Another example, illustrating a non-CRA convenience and needs consideration, is the attention given in the BB&T merger with SunTrust to concerns that SunTrust had engaged in misleading and unfair marketing and billing practices regarding products offered to business customers. The Federal Reserve's approval order was issued alongside a Consent Order that, among other things, required the merged institution to "create a procedure for verifying that the restitution previously provided by SunTrust Bank has been appropriate and for providing additional restitution if required."

members of the public) had been reviewed and approved by the OCC.[20] More typically, acquirers with satisfactory ratings demonstrate a record of improving CRA performance, and many proposed transactions are associated with commitments to expand specific CRA programs.

The effectiveness of the applicant in combating money laundering. BSA/AML enforcement actions can have a significant impact on a bank's ability to engage in transactions, since the effectiveness of its efforts in combating money laundering are expressly required to be considered by the banking agencies when evaluating proposals subject to the BMA and the BHCA.[21] Agency guidance goes further than the statutory requirement by providing that significant AML program violations and/or deficiencies that result in even an informal enforcement action are generally preclusive of approval.[22]

The M&T acquisition of Hudson City in 2015 illustrates the importance of BSA/AML compliance in obtaining regulatory approval for bank mergers and acquisitions. In this case, M&T had already submitted its application when examiners identified weaknesses in the bank's BSA/AML and consumer compliance programs. As a result (as described in the Federal Reserve's approval order), approval was delayed until steps toward remediation were well underway.

The financial resources and prospects of the applicant. The bank regulatory agencies expect that applicants be in sound financial condition on a current and *pro forma* basis. This means that the resultant bank and holding company are expected to be "well capitalized" under applicable capital guidelines.[23] Other expectations include: (i) the holding company serves as a 'source of strength' to its subsidiary banks (i.e., there are significant resources at the parent company level), and (iii) transactions are not funded by short-term debt.

The agencies view inadequate financial resources as effectively dispositive as acquisitions that create or exacerbate financial issues can cause a rapid deterioration in the combined institution's financial wherewithal and create a larger resolution problem. In the Federal Reserve's approval orders for each of the 45 major transactions cited previously, the Board finds that the acquirer has sufficient financial resources to absorb the costs of the proposal and complete the integration of the banks' operations, and that the combined organization would be well capitalized, illustrating the application of the above criteria.

The managerial resources and prospects of the applicant. "Managerial resources" are defined by statute to "include the competence, experience and integrity" of the officers, directors and principal shareholders of the applicant bank.[24] In practice, the banking agencies generally regard an unresolved compliance issue and/or enforcement order as preclusive of an M&A approval (although the statute provides instead that, at most, they should be considered). The agencies have suggested, in general terms, that a ban on acquisitions for applicants

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[20] In addition, the application was not approved until OneWest's compliance with a recent Consent Order issued by the OCC, related to the bank's foreclosure practices, had been verified.

[21] Section 327 of the USA Patriot Act: (i) amended section 3(c) of the BHCA and requires that the Federal Reserve take into consideration the effectiveness of an applicant company in combating money laundering activities, when the Federal Reserve acts on an application to acquire a bank, and (ii) requires the agencies to consider the effectiveness of an insured depository institution in combating money laundering activities, in connection with any application filed under the BMA. See SR Letter 02-8: "Implementation of Section 327 of the USA Patriot Act in the Applications Process" (Mar. 20, 2002).

[22] For example, Federal Reserve SR letter 14-2 contemplates such an approach.

[23] The law governing interstate bank merger transactions, Riegle-Neal, for example, provides that the responsible federal banking authority may approve an application for an interstate merger only if such agency determines that the resulting bank would be "well capitalized" (and "well managed") upon consummation of the transaction. 12 U.S.C. § 1831u(b)(4)(B).

[24] See 12 U.S.C. § 1842 (c)(5).

with a compliance issue – or a rating of a "3" for "management" or a composite "3" for safety and soundness – may be necessary to avoid diversion of managerial resources from remediation of those compliance issues. [25]

In certain cases, regulatory authorities will formally prohibit bank expansion via the terms of an enforcement order, but as noted above, it is more often the case that applicants with compliance issues will simply put expansionary plans on hold. They may be discouraged from filing an application or encouraged to withdraw an application that has already been filed.

In other cases (e.g., the M&T acquisition described previously), regulatory approval will be withheld until those issues have been resolved. In general, a banking organization must not only cure the issue and have the cure validated by internal audit but also must demonstrate that remediation is "sustainable" to the satisfaction of bank examiners. That process could take over a year (and sometimes several years) even when the bank proactively remedies the issue.

***Financial stability assessment*.** The 2010 Dodd-Frank Act added the so-called "financial stability factor" to the list of statutory considerations for bank transactions.[26] In making its financial stability assessment, the Federal Reserve has considered five factors in determining the "systemic footprint" of the merged firm: size; substitutability of providers for critical products and services; interconnectedness; contribution to complexity of the financial system; and the extent of cross-border activities. These factors roughly align with the factors that the Board (and Basel Committee) has used to determine systemic risk for purposes of determining whether a firm is a "global systemically important bank" (GSIB) and thereby subject to higher loss absorbency requirements.[27]

There is little reason to believe that the Federal Reserve underplays its responsibility for assessing the financial stability implications of proposed mergers. The approval orders for the recent mergers of BB&T with SunTrust and of PNC with BBVA highlight the Federal Reserve's substantive approach. In both cases, the approval order incorporated a quantitative analysis of each financial stability metric as well as qualitative factors. In addition, the GSIB surcharge score of the combined organization (a measure of a firm's systemic importance) was calculated and found to be far below the minimum threshold that identifies a financial institution as a GSIB.[28]

It is natural that such mergers between two large institutions would generate consideration around financial stability, given the resulting, outward shift in the overall size distribution of U.S. banking organizations. However, it is important to consider that the current, sized-based ("enhanced prudential standards") rules governing capital and liquidity requirements set stringent safety and soundness standards for all institutions larger than $250 billion in assets in the U.S., helping to mitigate financial stability concerns. For instance, such institutions (whether GSIBs

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[25] According to Federal Reserve SR letter 14-2, "The [Federal Reserve] expects that a banking organization will resolve all material weaknesses identified by examiners before applying to engage in expansionary activity." The OCC's Licensing Manual, Business Combinations (occ.gov) (July 2018) states that in the context of MRAs and program deficiencies, the OCC assesses the nature and duration of the issues, the institution's progress in remediating identified program deficiencies, and whether the proposed combination would detract from the remediation, exacerbate existing problems, or create new problems for the resulting institutions. In the context of an enforcement action or less than satisfactory ratings, the Manual simply states that in these circumstances the bank should consult with its supervisory office and Licensing Division before pursuing any plans for a combination.

[26] According to recent bank M&A orders, the Federal Reserve generally presumes that a proposal does not raise material financial stability concerns if the assets involved fall below certain size thresholds (proposals involving an acquisition of less than $10 billion or resulting in a combined firm with less than $100 billion in total assets.)

[27] See Baer, Greg, "The Financial Stability Factor in Bank M&A: Lessons from the BB&T Order," February 4, 2020, https://bpi.com/the-financial-stability-factor-in-bank-ma-lessons-from-the-bbt-order/

[28] In the case of BB&T with SunTrust, the Federal Reserve's analysis determined that the combined organization would have a GSIB method 1 score of 29 points, well below the minimum (130 basis point) GSIB threshold and suggestive of relatively little systemic risk (less than 10 percent of the average score of the top five institutions). Similarly, in the case of PNC with BBVA, the Federal Reserve calculated the combined institution's GSIB method 1 score to be 42 points, again well below the minimum threshold. This score was close to PNC's current method 1 score, "indicating that the transaction would not increase materially PNC's systemic importance."

or not) are subject to the annual supervisory stress test, which directly calibrates their capital requirement through the stress capital buffer, and to the single counterparty credit limit standard, which helps mitigate interconnections.

Issues for future research. While a gross mischaracterization to refer to the regulatory review process for bank mergers as a "rubber stamp," it is fair to pose and explore questions about judgmental aspects of the process. What elements can be validated, refined or strengthened through empirical research?

For instance, as noted, approval decisions are sometimes supported by findings that a market is "attractive for entry," and several empirical studies provide support for a relationship between entry and declines in market concentration. However, we are not aware of any study assessing whether use of this criterion as a mitigating factor in merger decisions yielded the intended longer-term outcome. That is, was the increase in market concentration associated with the merger ultimately mitigated by entry by other depository institutions?

How mergers may impact the "convenience and needs of the communities to be served," particularly in the context of small business lending, is another issue meriting further study. Independent of its effects on market competitiveness, a merger may be disruptive to some established relationships between a bank and its small business loan customers.[29]

For example, a recent study from the Federal Reserve Bank of Philadelphia finds evidence that acquisition of a community bank tends to negatively impact small business lending in the target bank's market when the acquirer is an institution without a prior presence in the market.[30] Another recent study finds that branch consolidation accompanying large bank mergers during 1999 through 2012 were associated with declines in small business loan volume.[31]

At the same time, mergers often are associated with efficiency gains, including improvements to cost and risk management that can help increase small business lending of the overall, combined institution over the long term. A convenience and needs assessment must weigh both potential costs and benefits. Research that explores how best to conduct such assessments might be worth pursuing.

CONCLUDING COMMENTS

This note rebuts the notion that regulatory approvals of bank mergers have become a "rubber stamp" because of a lack of denials or court challenges. Rather, the banking agencies employ a deliberating, rigorous process that, time and again, winnows out applications that would not pass the robust antitrust, community reinvestment, BSA/AML, financial resources, managerial competence and financial stability standards. Moreover, transparency about the standards that have governed these reviews for many years means that well-counseled banks typically do not propose inappropriate mergers to begin with.

Especially among large merger transactions over the past 15 years, the merging institutions were frequently required to scale back their combined market shares via divestiture of branches as a condition for approval, thereby maintaining banking market competitiveness. Adherence to DOJ banking merger guidelines is further

[29] Evidence suggests that ongoing banking relationships remain important in small business lending, with small businesses particularly dependent upon local banks for obtaining credit. See, for example, Robert M. Adams, Kenneth P. Brevoort, and John C. Driscoll, "Is Lending Distance Really Changing? Distance Dynamics and Loan Composition in Small Business Lending," Board of Governors of the Federal Reserve System, Finance and Economics Discussion Series, February 2021.

[30] See Julapa Jagtiani and Raman Maingi, "How Important Are Local Community Banks to Small Business Lending? Evidence from Mergers and Acquisitions." Federal Reserve Bank of Philadelphia Working Paper, August 2019.

[31] See Hoai-Luu Q. Nguyen, "Are Credit Markets Still Local?" American Economic Journal: Applied Economics 11(1), January 2019, pp. 1-32.

reflected in the fact that there has been little change in the percentage of urban banking markets that are considered highly concentrated. Moreover, the agencies have conservatively applied other statutory considerations – those relating to CRA and safety and soundness ratings as well as consumer compliance and AML-related supervisory findings. These effectively function as dispositive standards that preclude approval, and sometimes even merely the filing, of applications until remediation is found to be "sustainable" to the satisfaction of bank examiners.

Financial stability concerns are comprehensively addressed in the Federal Reserve's review of proposed M&As of larger transactions. A multi-dimensional, detailed assessment of financial stability risks is conducted, utilizing key, quantitative metrics along with examination of qualitative factors.

Nonetheless, there is a role for future research focusing on judgmental aspects of merger reviews. Examples of issues for further research include identification and quantification of factors that may mitigate an increase in market concentration, and how best to approach convenience and needs analysis of effects on small business lending. The goal of such research would be to identify ways to strengthen the merger review process and to bolster the public's confidence in it.

APPENDIX 1: APPROVED MERGERS INVOLVING LARGE BANK HOLDING COMPANIES SINCE 2005

1. **Mergers with Divestures**

M&A Event	# overlapping markets	# markets with divestiture	# of branches to be divested
BB&T Corporation / First Citizens Bancorp (2006)	6	1	1
Regions Financial Corporation / AmSouth Bank (2006)	67	17	52
PNC Financial Services Group / National City Corporation (2008)	10	5	61
TD Bancorp / South Financial Group (2010)	5	1	(Unspecified--to total $59 billion in deposits)
Wells Fargo & Co / Wachovia Corporation (2011)	49	6	6
BB&T Corporation / Susquehanna Bancshares (2015)	5	1	2
Huntington Bancshares / FirstMerit Corporation (2016)	27	3	13
KeyCorp / First Niagara (2016)	12	1	18
First Horizon National Corporation / Capital Bank Financial Corporation (2017)	11	1	2
BB&T Corporation / Suntrust Banks (2019)	81	7	30
Huntington Bancshares / TCF Financial Corporation (2021)	20	5	9

2. **Other Mergers**

Capital One Financial Corporation / Hibernia Corporation (2005); NY Community Bancorp / Long Island Financial (2005); PNC Financial Services Group / Mercantile Bankshares Corporation (2005); PNC Financial Services Group / Riggs National Corporation (2005); Bank of America Corporation / MBNA Corporation (2006); BB&T Corporation / Main Street Banks (2006); Capital One Financial Corporation / North Fork Bancorporation (2006); Compass Bankshares / TexasBank Holding Co. (2006); Huntington / Unizan Financial (2006); Synovus Financial Corp / Riverside Bancshares (2006); Bank of New York / Mellon Financial Corporation (2007); Huntington Bancshares / Sky Financial (2007); Banco Santander / Sovereign Bancorp (2008); Bank of America Corporation / Countrywide Financial Corporation (2008); KeyCorp / USB Holding (2008); PNC Financial Services Group / Sterling Financial Corporation (2008); Bank of America Corporation / Merrill Lynch (2009); Bank of Montreal / Marshall & Isley Corporation (2011); Comerica Incorporated / Sterling Bancshares (2011); M&T Bank Corporation / Wilmington Trust Company (2011); Capital One Financial Corporation / ING Bank (2012); Mitsubishi UFJ Financial Group / Pacific Capital Bancorp (2012); PNC Financial Services Group / RBC Bank (2012); BB&T Corporation / National Penn Bancshares (2015); CIT Group / IMB Holdco (2015); M&T Bank Corporation / Hudson City Bancorp (2015): Royal Bank of Canada / City National Corporation (2015); Canadian Imperial Bank of Commerce / PrivateBancorp (2017); People's United Financial / Suffolk Bancorp (2017); TIAA / Everbank Financial Corporation (2017); Synovus Financial Corporation / FCB Financial Holdings (2018); Fifth Third Bancorp / MB Financial (2019); First Horizon National Corporation / Iberiabank (2020); PNC Financial Services Group / BBVA USA Bancshares (2021).

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September 29, 2021

The Honorable Ed Perlmutter
Chairman
Subcommittee on Consumer Protection and
Financial Institutions
House Committee on Financial Services
U.S. House of Representatives
Washington, DC 20515

The Honorable Blaine Luetkemeyer
Ranking Member
Subcommittee on Consumer Protection and
Financial Institutions
House Committee on Financial Services
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Perlmutter and Ranking Member Luetkemeyer,

On behalf of America's credit unions, I am writing regarding the hearing entitled, "The Future of Banking: How Consolidation, Nonbank Competition, and Technology are Reshaping the Banking System." The Credit Union National Association (CUNA) represents America's credit unions and their more than 120 million members.

CUNA appreciates the Subcommittee's commitment to oversight of the financial services sector by holding this hearing. The scope of this hearing should lead the subcommittee to examine the legal framework and regulatory scope governing the oversight of traditional banks and other commercial businesses that are engaged in financial activity. Credit unions are concerned that non-regulated companies are engaged in financial activities through partnerships with regulated financial institutions allowing them to offer products and services that are traditionally offered by credit unions and banks, but without the regulatory safeguards that these non-financial service companies would be subject to if they were a financial institution. These so called "rent-a-bank relationships" allow non-bank providers to operate under the cloak of a regulated entity while avoiding regulations that would normally be in place, often from the state level, for the products and services they offer.

CUNA Supports Oversight of Financial Technology Companies and Digital Currency

We urge the Subcommittee to look closely at the regulatory gaps that fintech and other companies exploit to provide financial services. This "regulatory arbitrage" leads to less consumer protection and, at its worst, leads to the exploitation of consumers as their expectation of consumer protection have historically been based on the regulation of financial institutions and the products and services they offer. Consumer protection can be vastly different when a product or service is offered by non-financial institution, and consumers do not always appreciate this difference.

Our members are also concerned with the expansion of the use of cryptocurrency and other digital currencies, which allow banking-like products and services outside of the scope of consumer protection regulations. Whether from a fintech engaging in "regulatory arbitrage" or the avoidance of regulation through disintermediation of financial institutions enabled by digital assets, consumers receive less protection when bank-like services such as deposit taking, lending and payments are obtained outside of the regulated banking system. The impact of disintermediation should remain a focus of this Subcommittee.

The Credit Union Governance Modernization Act of 2021

Under current law, a two-thirds vote of the full credit union membership is required to expel a credit union member. Although extremely rare, some members prove to be a threat and engage in dangerous or illegal conduct. This can include physical damage to property, harassment, or fraud. In these cases, the time and resources required for a full vote are simply not practical nor effective.

H.R. 2311 would amend the Federal Credit Union Act to afford a more efficient process by requiring a majority vote of the board of directors of a credit union while at the same time providing a robust appeal process for the credit union member.

CUNA strongly supports the Credit Union Governance Modernization Act which would allow credit unions the ability to better protect members and employees.

H.R. ___, the NCUA Oversight of Third Party Vendors Act

The NCUA Oversight of Third-Party Vendors Act would permanently give the National Credit Union Administration (NCUA) the temporary authority it had leading up to the Year 2000 transition (Y2K) to examine credit union service organizations (CUSOs) and other third-party vendors used by credit unions. This authority, which was previously granted due to the specific circumstances surrounding Y2K, expired in 2001.

We are naturally skeptical of legislation that conveys expanded powers on NCUA in areas where they have minimal or no expertise. Nevertheless, we recognize that threats such as cybersecurity breaches and money laundering impact credit unions and the credit union system. Credit unions often rely on CUSOs and/or third-party vendors to deliver products and services to their members and expect limited exposure to these threats. Therefore, we understand that there may be instances where NCUA's involvement is warranted for supervising critical CUSOs and vendors that present material risks to the credit union system. Further, we acknowledge that such authority, appropriately and measuredly applied, could benefit credit unions, especially small credit unions, by satisfying part of their due diligence responsibilities when contracting with third party vendors.

That said, we are unable to support legislation that would provide the agency with unfettered authority to supervise all CUSOs and vendors. We would like to work with the Committee to tailor this legislation, so it targets high risk areas, such as cyber security and anti-money laundering relationships, and ensure that credit unions do not pay higher direct or indirect costs as a result of the agency exercising any new authority.

Bank Consolidation

Consolidation in the banking industry has been an ongoing trend since the 2008 recession. Banks closed more than 13,000 branches – 14 percent of all branches – between 2008 and 2020.[1] This ongoing, multi-year trend is not due to a few relatively small banks that have decided to sell to credit unions. These transactions are few and pale in comparison to a much larger number of bank-to-bank sales – 42 to 2,343 over the last 10 years.[2] The deals occur between two private entities in the free market and should be encouraged, not impeded, as they decrease banking deserts and improve financial access.

These transactions do not deprive the government of tax revenue. Most of the banks that sell to credit unions paid little or no taxes in the preceding years, and the taxes credit unions paid on these transactions – 24.5 percent of the total transaction value – often exceed the taxes the banks had paid in recent years.

[1] https://ncrc.org/research-brief-bank-branch-closure-update-2017-2020/

[2] Federal Deposit Insurance Corporation

Critics of these transactions ignore the real issues at hand: Too many consumers are hurting, too many lack convenient access to safe and affordable financial services and too many small financial institutions – banks and credit unions alike – have found it impossible to keep up with the cost and complexity of compliance with an ever-increasing regulatory burden flowing out of the Consumer Financial Protection Bureau and other regulators. This forces the leaders of struggling banks to either close or to fulfill their fiduciary duty to shareholders by taking the best offer available – whether it comes from a megabank, local competitor, or credit union.

Furthermore, acquiring credit unions almost always continue to operate the bank's branches **leading to less consolidation in the industry.** When banks sell to credit unions, the credit union will often retain the bank's branches and employees. This allows consumers who would otherwise be potentially left in a banking desert to keep access to locally provided financial services, often with better terms rates.

Preventing banks from selling to credit unions would have a fundamentally adverse impact on local communities and their access to financial services, hurt efforts to promote financial equity, and undermine free-market forces in which shareholders receive the best return on investment.

Banks that sell to credit unions ensure continued access to locally provided, safe and affordable financial services. These types of sales help prevent new banking deserts from developing. They should be encouraged — not impeded.

On behalf of America's credit unions and their more than 120 million members, thank you for the opportunity to share our views.

Sincerely,

Jim Nussle
President & CEO

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September 29, 2021

The Honorable Ed Perlmutter
Chairman, Subcommittee on Consumer Protection and Financial Institutions
Committee on Financial Services
House of Representatives
Washington, DC 20515

The Honorable Blaine Luetkemeyer
Ranking Member, Subcommittee on Consumer Protection and Financial Institutions
Committee on Financial Services
House of Representatives
Washington, DC 20515

Dear Chairman Perlmutter and Ranking Member Luetkemeyer:

On behalf of the members of the Electronic Transactions Association (ETA), I appreciate the opportunity to submit this statement for the record before the Subcommittee's hearing, "The Future of Banking: How Consolidation, Nonbank Competition, and Technology Are Reshaping the Banking System."

The Electronic Transactions Association (ETA) is the world's leading advocacy and trade association for the payments industry. Our members span the breadth of significant payments and fintech companies, from the largest incumbent players to the emerging disruptors in the U.S and in more than a dozen countries around the world. ETA members make commerce possible by processing approximately $22.5 trillion annually in purchases worldwide and deploying payments innovation to merchants and consumers.

One of the goals of our financial system is to provide high-quality, affordable financial services to the broadest possible set of consumers. Over the past decade, financial institutions and fintech companies have transformed the financial landscape through the development and deployment of innovative products that expand access to and provide a number of new financial offerings for consumers at lower costs. A few of these efforts include the following.

Online Small Business Lenders

Small businesses are vital to the U.S.; however, these businesses routinely lack access to necessary capital to maintain and expand operations. Fortunately for small businesses, ETA's members are expanding access to credit and offering attractive alternatives to traditional loans. As evident in their participation in the Paycheck Protection Program[1], online lenders used sophisticated, data-driven processes to reach funding decisions quickly and efficiently and provide access to capital to approved borrowers expeditiously. This allowed small businesses to cover operational costs.

Expanding this access through the bank partnership has allowed numerous banks to partner with fintechs, using their platforms to streamline and automate their loan application processes and expedite their underwriting processes. These platforms allow potential lenders to analyze a broad range of financial and operational data to determine an applicant's creditworthiness — and to do so quickly. Enabling small business borrowers to apply for loans online reduces processing costs,

[1] As of April 2021, ETA members have helped the SBA process and disburse more than $142 billion in PPP loans to nearly 2.5 million small businesses.

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accelerates decision-making, speeds access to funds, and improves the overall customer experience. This type of collaboration has already provided numerous benefits for consumers.

Nontraditional Payments

In 2019, the Federal Reserve Bank of San Francisco[2] reported that 73% of payments in the U.S. were made in person. For these in-person payments, cash accounted for 35% of the volume. With the services and products offered by ETA member companies, underserved consumers have additional options to pay for their purchases in cash and a pathway to participate in the digital economy.

ETA member companies offer safe, secure, and convenient ways for consumers to add cash directly to their accounts and pay for online purchases. eCash solutions allow consumers to pay for online purchases *but then complete the process at a physical payment point with cash*. Participating merchants provide the option at checkout for consumers to pay with cash. The consumer receives a barcode to complete the payment amount via text, email, or printable PDF and can then pay in cash at participating retail locations, such as CVS and Walgreens, via the barcode to complete the online purchase.

Other eCash solutions enable consumers to load cash onto their digital wallet accounts so they have alternative ways to shop or pay their bills online. Some solutions even allow individuals to directly deposit their paychecks into their account for free, so consumers can enjoy the benefits of spending their balance anywhere.

Billions of people around the globe face inconvenient, time-consuming, and prohibitively expensive systems for completing simple transactions like cashing a paycheck or sending money to a loved one. In this era of mobile technology and advanced software platforms, technology helps people around the world manage, move, and spend their money by providing more consumer choice.

Mobile Payments

In the U.S., 98% of the adult population has a mobile phone and of those, 81% are smartphones, a steady increase from previous years. The FDIC has found that mobile banking, as a primary method of account access, continues to increase sharply (from 9.5% in 2015 to 34% in 2019), overtaking online banking as the most prevalent primary banking method. Mobile payments are a convenient and secure alternative to cash and checks that allow consumers to pay for goods and services in a safe and cost-effective manner. These products also enable greater financial literacy by allowing consumers to manage their accounts from their mobile phones. The adoption rate of mobile payments by consumers and merchants is on the rise.

Mobile payments aren't just for commerce but are being used by employees nationwide. ETA members empower workers with immediate access to their money and multiple options for receiving it, helping them manage their day-to-day cash needs more efficiently and effectively.

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[2] Findings from the Diary of Consumer Payment Choice (2019). Federal Reserve Bank of San Francisco.

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By partnering those in the marketplace economy — such as workers in ridesharing, food delivery, and other freelance occupations —with payments companies, the industry provides workers with quicker access to their earnings through push-to-card payments. Providing consumers with the ability to quickly access their funds helps to deter the businesses that trap consumers with high-interest predatory loans. Ultimately, these solutions help consumers avoid cycles of debt.

Similar to mobile banks apps, mobile card apps have been downloaded by more than half of all U.S. consumers, who use them on a weekly or even daily basis. ETA is encouraged by this trend and sees value for consumers in the access, ease, ubiquity, and security of mobile payments. When using mobile wallets for in-store payments, both customers and merchants are protected by the latest innovations in payments security. Mobile wallets require a passcode, fingerprint, or facial recognition before a transaction can occur, and thus are highly secure. This two-step authentication and encryption makes them a great option for businesses to reduce the risk of fraud and ensure that their customers' data is safe. In addition, the standard for mobile payments is tokenization, a process that replaces the card number with a unique string of digital numbers during the transaction so that the account information remains secure.

ETA member companies are creating innovative offerings in financial services and revolutionizing the way commerce is conducted with safe, responsible, convenient, and rewarding payment solutions and lending alternatives that are available to a broad set of consumers. As the leading trade association for the digital transactions industry, ETA encourages policymakers to focus on a framework that ensures a positive policy environment — encouraging growth and innovation governed by common principles but tailored appropriately to a company's particular risk profile. As the industry continues to evolve, it is imperative that the framework is equipped to embrace the proper safeguards to protect consumers without stifling progress.

We appreciate the opportunity to submit this letter for the record and the Subcommittee's leadership on this topic. If you have any questions, please contact me or ETA's Senior Vice President of Government Affairs, Scott Talbott, at stalbott@electran.org.

Sincerely,

Jeff Patchen
Senior Manager of Government Affairs
Electronic Transactions Association

Financial Data and Technology Association

http://www.fdata.global/north-america

VIA ELECTRONIC SUBMISSION

September 29, 2021

The Honorable Ed Perlmutter
Chairman
Subcommittee on Consumer
Protection and Financial Institutions
House Financial Services Committee
2129 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Blaine Luetkemeyer
Ranking Member
Subcommittee on Consumer
Protection and Financial Institutions
House Financial Services Committee
4340 O'Neill House Office Building
Washington, D.C. 20024

Dear Chairman Perlmutter and Ranking Member Luetkemeyer:

The Financial Data and Technology Association of North America ("FDATA North America") appreciates this opportunity to submit a letter for the record for the House Financial Services Committee's Subcommittee on Consumer Protection and Financial Institutions hearing entitled "The Future of Banking: How Consolidation, Nonbank Competition, and Technology are Reshaping the Banking System." As the leading trade association representing financial data aggregation firms and financial technology platforms that provide enhanced consumer financial access and inclusion, FDATA North America and its member companies strongly believe and advocate for a financial ecosystem in which the end user has complete utility of their financial data.

About FDATA North America

FDATA North America was founded in early 2018 by several firms whose technology-based products and services allow consumers and SMBs to improve their financial wellbeing. We count innovative leaders such as the Alliance for Innovative Regulation, API Metrics, Basis Theory, Betterment, BillGo, Codat, Direct ID, Equitable Bank, Envestnet Yodlee, Experian, Fiserv, Flinks, Interac, Inverite, Intuit, Kabbage, Mogo, Morningstar, M Science, MX, Petal, Plaid, Questrade, Rocket Mortgage, Salt Edge, Trustly, ValidiFI, VoPay, Wealthica, Xero, and others among our members. We are a regional chapter of FDATA Global, which was the driving force for Open Banking in the United Kingdom, and which continues to provide technical and policy expertise to policymakers and to regulatory bodies internationally that are contemplating, designing, and implementing open finance frameworks. With chapters in North America, Europe, Australia, South America, and India, FDATA Global has established itself as an expert

Financial Data and Technology Association

http://www.fdata.global/north-america

in the design, implementation, and governance of open finance standards and frameworks globally since its inception in 2013.

FDATA North America's members include firms with a variety of different business models. Many provide technology services to large financial institutions or partner with financial institutions to enable innovation and expand financial access and inclusion. Others offer their own customer-facing financial products or services that may, for example, expand access to low-interest credit for thin or no-file borrowers, provide a gateway to automated savings or investments, onboard Small and Medium Sized Businesses ("SMBs") to accept and make digital payments, or support the SMB community by enabling technology-powered advisory and accounting services. Collectively, our members enable tens of millions of American consumers and SMB customers to access vital financial services and products, either on their own or through partnerships with financial institutions.

Regardless of business model, each FDATA North America member's product or service shares one fundamental and foundational requisite: dependence on the ability of a customer to actively permission access to some component of their own financial data that is held by an insured depository institution.

As the subcommittee further considers options to increase competition, spur innovation, and lower consumer financial costs in this uncertain economic environment, we respectfully offer that the creation of a legally binding customer financial data right would provide significant benefit to the financial services marketplace. FDATA North America welcomed President Biden's July 2021 Executive Order on Promoting Competition in the American Economy, which included a provision directing the Consumer Financial Protection Bureau ("CFPB" or "the Bureau") to finalize a rulemaking under its Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") Section 1033 authority. This rulemaking, when finalized, will provide a legally binding financial data right for consumers and will create a true open finance regime in the United States in which consumers and SMBs may choose from a more robust market of financial products and services.

CFPB Rulemaking Under Dodd-Frank Section 1033 Will Boost Market Competition

FDATA North America has, since its inception, encouraged the CFPB to promulgate, by rule, a customer financial data right that will spur greater financial services innovation and competition and improve consumer financial access and inclusion. We have been encouraged by two recent developments: the issuance of an advance notice of proposed rulemaking ("ANPR") by the Bureau pertaining to consumer access to financial records in October of last year and, more recently, language in President Biden's July 2021 Executive Order on Promoting Competition in

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the American Economy that directs the CFPB to consider "commencing or continuing a rulemaking under section 1033 of the Dodd-Frank Act to facilitate the portability of consumer financial transaction data so consumers can more easily switch financial institutions and use new, innovative financial products.[1]"

The building momentum toward this rulemaking comes at a pivotal moment for the United States. Countries around the world are quickly embracing the notion that the customer should be in control of their own financial data. By contrast, the unlevel playing field that currently exists for consumers and small- and medium-sized businesses in the United States constrains innovation, impedes healthy market competition and represents a significant global disadvantage.

This unfortunate situation endures because, unlike a growing list of other large nations across the globe, the United States lacks any distinct assertion of a customer's legal right to access themselves, or permission access to, their financial data. In the absence of a rule promulgated by the CFPB under Section 1033 of the Dodd-Frank Act, financial institutions may, and sometimes do, override their customers' direction to share data with third-party financial services providers that can meaningfully improve consumer and SMB financial outcomes.

Principles for Ensuring Consumer and SMB Financial Data Access

The CFPB can significantly level the playing field for consumers and SMBs, expand financial access and inclusion, improve competition in the financial services marketplace and, on a global level, ensure that the United States' financial services system remains competitive internationally. To accomplish these critically important objectives, FDATA North America has recommended to the Bureau that it utilize its Section 1033 authority to issue a rule that adheres to five key principles:

1. Create a legally binding customer financial data right;
2. Define and clearly enumerate the limited circumstances in which custodians of financial data may override customer consent;
3. Supervise financial data aggregation firms;
4. Coordinate with the prudential regulators on Regulation E modernization; and
5. Recognize the need to permit current and legacy technology.

The combination of these principles would provide consumers and SMBs with safe, secure access to their financial data and, by extension, to critically important financial applications and tools that can meaningfully improve their financial wellbeing.

[1] White House Executive Order on Promoting Competition in the American Economy; Section 5(t)(i); July 2021

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Conclusion

FDATA North America appreciates the attention by the subcommittee to this critically important issue. Every financial technology tool, regardless of its specific use case, depends on the ability of its customer, whether consumer or SMB, to grant access to components of their financial data. Accordingly, limitations, restrictions, or outright blocking of financial data access to consumers and SMBs threatens the ability of financial technology tools to support their customers' financial wellbeing and stifles innovation in the financial services marketplace.

As the CFPB works to promulgate a proposed rule under Section 1033 of the Dodd-Frank Act to improve competition in the financial services system, we hope that the subcommittee will continue to examine this vitally important space and encourage the Bureau to use its statutory authority to create a customer-centric, safe, competitive, and secure open finance system in the United States.

Thank you once again for holding today's hearing.

Sincerely,

Steven Boms
Executive Director
FDATA North America

ICBA
INDEPENDENT COMMUNITY
BANKERS of AMERICA®

September 29, 2021

Credit Union-Driven Consolidation and Non-Bank Competition Threaten Consumer Harm

The Independent Community Bankers of America, representing community banks across the nation with nearly 50,000 locations, appreciates the opportunity to provide this statement for the record for today's hearing titled: "The Future of Banking: How Consolidation, Non-Bank Competition, and Technology are Reshaping the Banking System." We appreciate the Committee raising the profile of fundamental questions that will determine the future of the American financial services landscape, and we are pleased to share the community bank perspective on these critical questions. **To ensure the hearing is comprehensive in scope, we ask that it also examine the emergence of multi-billion dollar credit unions, new credit union powers that go well beyond the scope of their original, tax-exempt mission, and recent trend of credit unions leveraging their tax-exemption to acquire community banks.**

ICBA believes that President Biden's recent Executive Order, "Promoting Competition in the American Economy," compels this broad examination. Tax-exempt credit union acquisitions of community banks exacerbate consolidation among financial institutions, create larger institutions, and result in branch closures. As the Executive Order notes: "Excessive consolidation raises costs for consumers, restricts credit for small businesses, and harms low-income communities." Because credit unions are exempt from the Community Reinvestment Act, bank acquisitions reduce the population of consumers who are protected by the CRA. More broadly, bank acquisitions flout the original purpose of the credit union tax exemption: to serve people of modest means. In July, a Michigan state-chartered purportedly "low-income" credit union announced the purchase at twice book value of a Florida bank specializing in aircraft financing for high-net-worth individuals. This is just one example in a trend that has increased sharply in recent years. There have been more than 100 credit union-bank purchases since 2003, 20 of which have occurred since 2019, and five of which have occurred in recent weeks. The first acquisition of a bank with more than $1 billion in assets, $1.6 billion Heritage Southeast Bank in Georgia, occurred in March of this year. We fully expect this trend to strengthen in the coming months and years unless Congress exercises appropriate oversight.

ICBA believes this acquisition trend is primarily driven by two factors. First, the credit union tax exemption creates inflated bank purchase offers. Second, the National Credit Union Administration's (NCUA's) permissive oversight of the credit union industry has allowed it to evolve far beyond its original tax-exempt mission. The agency has virtually dissolved field of membership limitations and, more recently, given credit unions authority to raise capital through the sale of subordinated debt securities to venture funds and other outside investors. This subordinated debt is being used to fund bank acquisitions.

As large credit unions – the largest now has assets of well over $100 billion – have prioritized rapid growth and non-traditional financial product offerings, the NCUA has failed to keep pace with the evolving character of the industry. Collectively, credit unions have added $1 trillion in assets in the last six years, and total industry assets recently surpassed $2 trillion. Today's hearing is an opportunity to update Congress's understanding of the industry and its impact on the American financial services landscape.

An NCUA that is truly independent of the industry it oversees, exercises robust supervision, and issues rules that are consistent with statutory authority is in the best interest of consumers, small businesses, and the American economy.

Industrial Loan Companies

The industrial loan company (ILC) has historically been limited and is offered by only a handful of states. A state chartered ILC has the power to operate nationwide. Prior to 2020, the FDIC had not approved deposit insurance for a new ILC for more than 10 years. We urge Congress to reexamine the significant risks posed by the ILC charter.

The ILC loophole allows commercial companies to own financial institutions that are the functional equivalent of banks and effectively mix banking and commerce. The Dodd-Frank Act included a three-year moratorium on FDIC approval of deposit insurance for new ILCs. However, in the past two years, the FDIC approved the applications of Square and Nelnet. There are currently six applications pending before the agency, including applications from Rakuten and GM Financial, each of which should raise concerns about the mixing of banking and commerce, impartial allocation of credit, consumer privacy and risk to the taxpayer. We can expect more massive technology and social media companies to seek to exploit the ILC loophole. If this exploitation is allowed, it would shift the American financial landscape and give rise to a whole new dimension of risk, a threat not only to our prosperity and economic diversity but to consumer privacy and fraud on a massive scale. What's more, commercial owners of ILCs, unlike bank holding companies, are not subject to consolidated supervision by the Federal Reserve. This constitutes a dangerous gap in financial safety and soundness oversight and new risk to the FDIC insurance fund.

ICBA supports all efforts to close the dangerous ILC loophole including the "Close the ILC Loophole Act," sponsored by Rep. Jesús "Chuy" García, which would amend the Bank Holding Company Act to remove the exemption for ILCs from the definition of a bank with a one-year transition period, thereby permanently closing the ILC loophole. Currently pending applications that may be approved within the next two years would also be grandfathered, though a two-thirds vote of the FDIC Board would be required for approval. ICBA has a number of suggestions for improving the Act, which we are sharing directly with Rep. García.

ICBA would also support a moratorium on ILC applications so that Congress can consider permanent closure of the loophole. The "Bank Charter Review Act," introduced in the last Congress, would create a three-year moratorium on the approval of deposit insurance applications for new ILCs and require and General Accountability Office to carry out a study of various federal and state banking charters. As you know, the Dodd-Frank Act created a three-year moratorium.

De Novo Charters Needed to Offset Consolidation

ICBA supports the Promoting New and Diverse Depository Institutions Act (H.R. 4590), sponsored by Rep. Jake Auchincloss, which would require the Federal banking regulators to conduct a joint study to assess the challenges faced by proposed depository institutions, including proposed minority depository institutions (MDIs), seeking de novo depository institution charters and to provide legislative recommendations to help these proposed institutions successfully obtain charters.

There has been a dearth of de novo charters in the past decade. An infusion of new charters is needed to offset consolidation in the banking sector and create a competitive landscape that will benefit consumers and small businesses. New minority community bank charters in particular will promote inclusiveness and prosperity in vulnerable, hard-to-reach communities and reduce the unbanked population.

Concrete, actionable proposals are needed to turn the tide of stagnant de novo bank formation. ICBA supports measures to spur the creation of de novo banks, such as phasing in capital standards for de novo banks over a period of three years and allowing for greater flexibility to modify the de novo business plan as conditions warrant. Start-up capital is often the greatest impediment to forming a new bank, and these provisions, among others, would help spur the creation of de novos, including MDIs.

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ICBA supports the Promoting Access to Capital in Underbanked Communities Act of 2021 (H.R. 2561), sponsored by Rep. Andy Barr, which would lower the primary barrier to the creation of de novo community banks by providing a three-year phase in of capital standards, a three-year phase in of the Community Bank Leverage ratio for rural community banks, and allow for business plan modification, among other provisions. We urge this committee's support for this important legislation to promote competition in financial services.

Closing

To conclude, the American financial services landscape is shifting rapidly and irreversibly as a result of recent trends. These include the rapid growth of credit unions and credit union-bank acquisitions and the chartering of new industrial loan companies. New bank charters are needed to offset ongoing consolidation. We urge Congress to exercise its oversight authority to examine these trends and pass appropriate legislation.

Thank you for your consideration.

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September 28, 2021

The Honorable Ed Perlmutter
Chairman
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Committee on Financial Services
United States House of Representatives
Washington, DC 20515

The Honorable Blaine Luetkemeyer
Ranking Member
Subcommittee on Consumer Protection and Financial Institutions
Committee on Financial Services
United States House of Representatives
Washington, DC 20515

Re: Tomorrow's Hearing on "The Future of Banking: How Consolidation, Nonbank Competition, and Technology are Reshaping the Banking System"

Dear Chairman Perlmutter and Ranking Member Luetkemeyer:

I am writing on behalf of the National Association of Federally-Insured Credit Unions (NAFCU) to share our thoughts ahead of tomorrow's hearing, "The Future of Banking: How Consolidation, Nonbank Competition, and Technology are Reshaping the Banking System." NAFCU advocates for all federally-insured not-for-profit credit unions that, in turn, serve over 127 million consumers with personal and small business financial service products. NAFCU thanks the Subcommittee for holding this important hearing on the forces shaping the future of the financial services industry, and we appreciate the opportunity to share the perspective of our credit unions.

Consolidation of the Credit Union Industry

Since the Great Recession, the combination of heightened regulatory requirements and low interest rates has been particularly hard on small financial institutions. This is especially true for small credit unions, which are far smaller than for-profit banks. Compliance burden drains the few resources that small credit unions have, leaving them with precious little to devote to the business of actually growing. Last fall, NAFCU surveyed our members about their credit union's growth rates prior to the pandemic. Among the smallest credit unions, those with under $100 million in assets, 44 percent answered that their credit union needed to grow faster to remain viable. That number tapered down to 8 percent for credit unions with over $1 billion in assets.

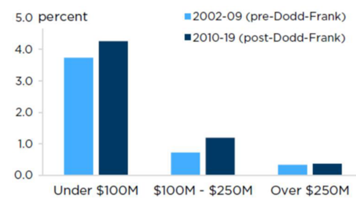
Chart 1.10 below shows where some of the specific pain points lie for small credit unions. As has been the case for a number of years, regulatory compliance was listed as the top concern among small credit unions. Other areas with a large discrepancy between credit unions based on size were staff retention, growth opportunities, and field of membership concerns such as an aging membership base and declining select employee groups (SEG). The National Credit Union Administration (NCUA) has made strides in advancing field of membership reform so that more credit unions can pursue growth opportunities. But the enormous day-to-day compliance burdens often prevent credit unions—especially small ones—from taking advantage.

The stresses on small credit unions have led to a rise in merger activity within the industry. Since passage of the *Dodd-Frank Wall Street Reform and Consumer Protection Act* (Dodd-Frank Act) in 2010, the number of credit unions has declined by over 30 percent. The increase in merger activity is primarily among smaller credit unions with less than $250 million in assets (see Chart 1.11 below). Larger credit unions experienced a mild rise in mergers during the Great Recession, but since 2011 the merger rate has returned to its low, pre-crisis level.

Chart 1.10: Strategic Challenges Rated as "Significant", by Asset Class

SEG = Select Employer Group
Source: NAFCU 2020 Federal Reserve Meeting Survey

Chart 1.11: Average Annual Merger Rate by Asset Class



Source: NAFCU analysis of NCUA data

The other side of industry consolidation has been a lack of de novo credit unions. From 2000 through 2009, the NCUA chartered eight new credit unions per year, on average. However, from 2010 through 2019, that number shrunk to just over two per year. Regulatory burden in the Dodd-Frank era is stifling the formation of credit unions, which already face a steep challenge in raising capital. This development comes at a time when bank branch networks are shrinking, and large banks in particular are fleeing from rural areas. Preventing the formation of new credit unions is another setback for underserved communities.

Credit unions have long been a critical provider of financial services to rural and underserved areas. As large and community banks have been shutting down branches and moving out of these areas, credit unions have been stepping up and expanding their presence to fill the void as they are able. In 2019, the Federal Reserve published a study detailing the dramatic decline in bank branches in rural areas. The study showed that 7 percent of rural bank branches were lost between the years 2012 and 2017, and that number has grown to 11 percent through 2019. Losses are not only concentrated among large banks, which lost 19 percent of their total rural branches, but also among community banks, which lost 5 percent. Credit unions, on the other hand, were the only financial institution type to add branches in both rural and urban areas, demonstrating credit unions' commitment to their members and serving underserved communities (see Table 2.1 below).

TABLE 2.1: BRANCH CHANGES BETWEEN 2012 AND 2019

Institution Type	County Type	Starting branches	Ending branches	Net change	Percent Change
Large Banks	Urban	48,707	42,298	-6,409	-13
	Rural	6,479	5,267	-1,212	-19
Community Banks	Urban	23,798	22,240	-1,558	-7
	Rural	13,890	13,137	-753	-5
Credit Unions	Urban	17,513	17,599	+86	+0
	Rural	3,458	3,537	+79	+2

Notes: Urban counties are those that were part of a metropolitan statistical area in 2017. Excludes U.S. territories as well as counties that have undergone code changes. Bank branches are assigned according to the institution it last reported under. Community banks are those with assets below $10 billion in June 2019 or the last reported total. Bank branches include only those coded as types 11 or 12 in the FDIC data.

As Congress grapples with ways to ensure that underserved and unbanked populations have access to affordable financial services, credit unions want to be able to help. Unfortunately, many credit unions are limited by the restriction on adding underserved areas to their field of membership. In 1998, as part of the *Credit Union Membership Access Act*, Congress provided federal credit unions with the ability to add underserved areas to their field of membership. However, subsequent legal challenges by the banking industry over the reading of the statute led the NCUA to limit this authority to only multiple common-bond credit unions in 2006.

NAFCU supports expanding the ability of credit unions to add underserved areas to their field of membership, such has been proposed in draft legislation by the Committee, the "Expanding Financial Access for Underserved Communities Act." While banking trades might say that credit unions already have the ability to add underserved areas to their fields of membership, they do not mention that not all have that ability, as only multiple common-bond credit unions can add underserved areas. Many credit unions want to do more to help underserved areas as banks retreat from these areas and passing legislation to help credit unions fill the void would be a commonsense first step.

Moreover, NAFCU supports efforts to promote new credit unions. We urge the Committee to consider and advance legislation to improve the chartering process for new credit unions as well as to consider ways to reduce the regulatory burden that discourages new credit union formation. We support legislative efforts such as the bipartisan H.R. 4590, the *Promoting New and Diverse Depository Institutions Act*, which would take important steps to help promote de novo institutions by studying the challenges facing these institutions and having regulators develop a strategic plan to meet those challenges.

NAFCU would also like to take this opportunity to comment on the issue of voluntary bank/credit union mergers, an issue which banking trades have long opposed. Contrary to what the banking trades might say, bank and credit union mergers are typically a win-win for a local community that may lose its community-focused financial services, or even local employees and branches, if a mega-bank buys the local community bank. Credit union-community bank mergers often mean employees retain jobs and branches remain open with a focus on the members in the community. These mergers also cannot occur without approval from both bank and credit union regulators. This is a power that NCUA takes seriously as evidenced by their work on rulemaking in this area last year. Furthermore, credit unions that merge with a bank retain their credit union characteristics and are still subject to strict statutory prohibitions and limits on powers as set out in the *Federal Credit Union Act*, including field of membership requirements for the newly acquired bank customers, limits on business lending, a usury ceiling, and the capital limitations of credit unions.

While the banking trades have also used these mergers to attack the tax status of credit unions, what they do not tell you is that these mergers are often purchase and assumption transactions (if the bank is a C-corporation, which is most common) and are subject to taxation at the bank level (unlike bank-to-bank transactions which are often stock transactions). We estimate that over $100 million in taxes have been paid in the past several years due to these transactions. Additionally, the credit union actually pays many taxes, such as local property taxes and payroll taxes when the former bank remains open as a credit union. The truth is that while banking trade groups have called on Congress to change the tax status of credit unions, they fail to disclose that the banking industry received tens of billions of dollars in annual tax breaks from the *Tax Cuts and Jobs Act*. They also fail to point out that nearly one-third of all banks are Subchapter S corporations and do not pay corporate income taxes themselves. These annual tax breaks for banks far outpace the annual tax expenditure of the credit union tax exemption.

The real issue is that it is difficult to be a community financial institution today. Regulatory burdens and competition from big banks and unregulated actors entering the financial services space make it hard to survive. Many institutions, whether banks or credit unions, need to grow to survive. One avenue for growth is mergers—whether bank-bank, credit union-credit union, or credit union-bank. The fact is that credit union-bank mergers remain a small percentage of overall mergers among financial institutions. There have also been cases where the bank acquires a credit union and is the surviving institution. A top priority of NAFCU is to ensure that there is an environment where credit unions can grow, thrive, and continue to serve the over 127 million Americans that are credit union members today. We look forward to continuing to work with you to achieve that goal.

Nonbank Competition and Fintech Partnerships

As NAFCU testified before the Subcommittee in April 2021, the growth of fintech in recent years offers new opportunities for the delivery of financial services.[1] The use of financial technology can have a positive effect on credit union members. Credit unions have worked with fintech companies to improve efficiency in traditional banking, and many of the technologies that are commonplace today, such as credit cards and e-sign, would have once qualified as "fintech" when they were first introduced. Consumers today come to expect technological developments from their financial institution—from online banking to mobile bill pay. Many credit unions embrace innovations in technology to improve relationships with members and offer more convenient and faster access to financial products and services.

However, the growth of fintech can also present new threats and challenges as novel entities emerge in an underregulated environment. As such, NAFCU believes that Congress and regulators must ensure that when technology firms and fintechs compete with regulated financial institutions, they do so on a level playing field where smart regulations and consumer protections apply to all participants. NAFCU has outlined some of the challenges and opportunities in this area in a white paper that proposes regulatory recommendations for oversight of fintech companies.[2]

For example, fintech companies that specialize in lending, payments, or data aggregation present unique consumer protection concerns. A fintech company that permits consumers to consolidate control over multiple accounts on a single platform elevates the risk of fraud and may not be subject to regular cybersecurity examination and data privacy and protection requirements in the same way that credit unions are under the *Gramm-Leach-Bliley Act* (GLBA). Although non-bank lenders are subject to consumer protection rules, the connectivity and segregation of discrete services within the fintech marketplace can create supervisory challenges.

Additionally, consumers may not be aware that funds deposited with certain fintech companies are not insured the same way deposits at a credit union or bank are and could be subject to loss. This could cause

[1] House Committee on Financial Services Subcommittee on Consumer Protection and Financial Institutions, "Banking Innovation or Regulatory Evasion? Exploring Trends in Financial Institution Charters," April 15, 2021, https://financialservices.house.gov/calendar/eventsingle.aspx?EventID=407533.
[2] NAFCU, Regulatory Approaches to Financial Technology, available at https://www.nafcu.org/fintech-whitepaper.

consumer confusion, or even harm confidence in the financial system should one of these companies have issues that cause a loss of consumer funds. An example of a step Congress could take to help ensure a level playing field would be to require a clear, concise, and prominent disclosure to consumers when funds are uninsured.

Recently, fintech companies are enjoying unprecedented liberalization of bank chartering rules to either acquire or become banks. Recent developments with both the Office of the Comptroller of the Currency's (OCC) new chartering options and the Federal Deposit Insurance Corporation's (FDIC) approval of deposit insurance for Industrial Loan Company (ILC) applicants also present problems. In each case, a nonbank company can potentially evade regulation under the *Bank Holding Company Act* (BHCA), either because of a statutory loophole unique to ILCs, or because the entity does not accept deposits. Lack of BHCA coverage raises serious concerns regarding the quality and extent of supervision for these specialized or limited purpose banking entities. Chartering additional ILCs or granting new licenses to payments companies could also weaken the safety and soundness of the wider financial system.

In certain cases, specialized, limited purpose bank charters may allow a fintech to operate with national bank privileges but without the same prudential safeguards that apply to traditional banks and credit unions. While some may characterize these chartering schemes as innovative, they are ultimately loopholes that invite unnecessary risk into the financial system and create an uneven playing field.

NAFCU believes that there are a number of steps that should be taken to address our concerns. First, it is important that existing charters, such as the credit union charter, keep pace with advances in technology and consumer preferences to ensure that credit unions have the tools to serve their members' needs, especially post-pandemic. Additionally, we support a moratorium on new ILC charters and closing the BHCA ILC loophole, which we are pleased to see addressed in draft legislation before the Subcommittee, the "Close the ILC Loophole Act." Congress should also ensure that the data security and privacy requirements for financial institutions in the GLBA, including supervision for compliance, apply to all that are handling consumer financial information and that programs for implementing these requirements conform to the guidance developed by Federal Financial Institutions Examination Council (FFIEC) member agencies.

NAFCU also believes financial regulators have a role to play in the supervision and regulation of fintechs under their existing authorities. Congress should also be willing to step in and clarify the role of regulators when necessary. For example, NAFCU believes that the Consumer Financial Protection Bureau (CFPB) can play a role under its "larger participants" authority under the Dodd-Frank Act to regulate and supervise technology firms and fintech companies that enter into the financial services marketplace. If the CFPB does not believe it has this authority currently, Congress should examine granting the Bureau explicit authority in this area.

Congress should also consider creating an FFIEC subcommittee on emerging technology to monitor the risks posed by fintech companies and develop a joint approach for facilitating innovation. We would envision the subcommittee having the following under its charge:

a. To report its findings to Congress annually;
b. To define the parameters of responsible innovation to ensure consistent examination of emerging technologies;
c. To identify best practices for responsible innovation; and,

d. To recommend regulatory improvements to allow FFIEC-regulated institutions to adopt new technologies with greater legal certainty.

We would also like to take the opportunity to comment on another piece of draft legislation before the Subcommittee, the "NCUA Oversight of Third Party Vendors Act." NAFCU and our member credit unions believe that cybersecurity, including the security of vendors that credit unions do business with, is an important issue. However, we are opposed to granting additional authority to the NCUA to examine third parties at this time. NAFCU believes in a strong NCUA, but we also believe that the NCUA should stay focused on where their expertise lies—regulating credit unions. Credit unions fund the NCUA budget. Implementing such new authority for the NCUA would require significant expenditures by the agency. The history of the NCUA's budget growth has shown that these costs would ultimately be borne by credit unions and their members.

There are other tools already in place for the agency to get access to information about vendors. We believe the agency's time and resources are better focused on reducing regulatory burden by coordinating efforts among the financial regulators. The NCUA sits on the FFIEC with the FDIC, OCC, and the Federal Reserve. The FFIEC was created to coordinate examination findings and approaches in the name of consistency and to avoid duplication. This means that as a member of the FFIEC, the NCUA should be able to request the results of an examination of a core processor from the other regulators and not have to send another exam team from the NCUA into their business and duplicate an examination. This would seem to be an unnecessary burden on these small businesses. Additionally, if the NCUA did its own examination, the likelihood of finding anything the other regulators did not would seem to be close to nil.

Instead of granting the NCUA vendor examination authority, Congress should encourage the agency to use the FFIEC and gain access to the information on exam findings on companies that have already been examined by other regulators. This would address the NCUA's concerns without creating additional costs to credit unions and increasing regulatory burdens on credit unions and small businesses.

Other Legislation Before the Subcommittee

NAFCU supports H.R. 2311, the *Credit Union Governance Modernization Act of 2021*, which would help protect credit unions and their members from abusive, fraudulent, or criminal activity. Currently, federal credit unions can only expel a member of their community by a two-thirds vote of all members at a special meeting and only if the behavior that member is engaged in is illegal. With notice requirements, the time it takes to hold a special meeting is significant. This legislation would allow credit unions to adopt an expulsion policy to expel members who engage in abusive or illegal behavior, while allowing for an appeal process that would provide due process for the accused member. It would also provide parity with several state-chartered credit unions' model or standard bylaws, which often have a "for cause" provision or a board-adopted policy for expulsion. Credit unions have an obligation to ensure their cooperatives act in the best interests of their members and local communities. This common-sense legislation would put safety first, while still protecting the rights of credit union members.

Other Issues to Consider on the Future of Financial Services

As we have previously communicated, NAFCU believes that the lack of appropriate separation between commercial and investment banking activities presents risks that are worth legislative consideration. A significant aspect of this risk involves reliance by nonbank financial firms on deposit accepting banks to secure liquidity in times of financial stress or crisis. NAFCU believes that such dependency undermines financial stability in the long term, which puts both credit unions and their members at risk. Consequently, NAFCU continues to recommend that Congress consider the creation of a modern *Glass-Steagall Act* to address bipartisan concerns related to the increasingly interconnected and interdependent shadow banking system. Such a new law should be designed to protect consumers against future financial crises caused by big banks pushing the limits of what constitutes the "business of banking."

We appreciate the opportunity to share our input and look forward to continuing to work with the Subcommittee on these issues. Should you have any questions or require any additional information, please contact me or Sarah Jacobs, NAFCU's Associate Director of Legislative Affairs, at sjacobs@nafcu.org.

Sincerely,

Brad Thaler

Brad Thaler
Vice President of Legislative Affairs

cc: Members of the Subcommittee on Consumer Protection and Financial Institutions

National Armored Car Association

IACOA
INDEPENDENT ARMORED CAR OPERATORS ASSOCIATION

September 29, 2021

The Honorable Ed Perlmutter
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Blaine Luetkemeyer
U.S. House of Representatives
Washington, D.C. 20515

RE: Payment Choice Act of 2021

Dear Chairman Perlmutter and Ranking Member Luetkemeyer:

On behalf of the National Armored Car Association (NACA) and the Independent Armored Car Operators Association (IACOA), we thank you for holding today's hearing to examine evolving trends in the U.S financial system and write to express our support for the Payment Choice Act of 2021, which would protect Americans' right to pay for purchases with cash at retail locations.

NACA's and IACOA's members provide secure transportation and cash management services for the Federal Reserve, financial institutions, state and local governments, and private businesses and individuals across the United States and internationally. Together, we have handled virtually every note in circulation in the United States. We have long advocated for the importance of cash as it protects consumer privacy, keeps costs low for businesses, and does not discriminate against those who do not have access to a bank account.

While the COVID-19 pandemic placed the world on hold, our members and their essential employees never stopped working. Our carriers delivered essential currency to support critical ATMs, banks, and business operations. Our work supported the millions of unemployed Americans who received unemployment benefits via debit card and ensured the hundreds of millions of Americans receiving stimulus payments were able to access their nearest ATM and withdraw cash.

While we have always recognized the importance cash plays in our economy, the COVID-19 pandemic has highlighted that, now more than ever, cash is essential to the lives of millions of Americans, including the 18% of American adults that are unbanked or underbanked. These individuals, a majority of whom belong to a racial or ethnic minority group, have limited or no access to checking and savings accounts and are unable to make purchases using a card or contactless payment method. Because cash is their primary means of participating in the economy, retailers that restrict cash payments effectively discriminate against the people who prefer to pay, or can only pay, with cash.

Currently, Colorado, New Jersey, Massachusetts, Rhode Island, New York City, Philadelphia, San Francisco, and Washington D.C. protect consumers' choice to pay with cash by prohibiting retailers from refusing it as a valid form of payment. These protections not only ensure that underbanked and unbanked individuals have equal access to necessary goods and services, but they also allow all Americans to have a payment option that protects their privacy and offers them freedom from the often devastating effects of financial cybercrimes. Cash has also proven a highly reliable form of payment, ensuring financial transactions can always take place despite power outages or failures to the technological infrastructure that is necessary to conduct other methods of payment.

In short, we believe, this critical legislation can effectively protect consumers from retail establishments that discriminate against cash as a form of payment and ensure the financial freedom that has been integral to our country's economic growth.

We thank you for holding today's hearing and encourage the committee to protect payment choice for all Americans including the preservation of cash as a payment option.

Sincerely,

Basil Thomson

Basil Thomson
Executive Director
National Armored Car Association

John Margaritis

John Margaritis
Administrator
Independent Armored Car Operators Association

The Honorable Donald M. Payne, Jr.
Statement for the Record
U.S. House Committee on Financial Services
Subcommittee on Consumer Protection and Financial Institutions
The Future of Banking: How Consolidation, Nonbank Competition, and Technology are Reshaping the Banking System
September 29, 2021

Chairman Perlmutter and Ranking Member Luetkemeyer, thank you for convening today's hearing.

Section 5103 of Title 31, United States Code, declares: "United States coins and currency . . . are legal tender for all debts, public charges, taxes, and dues." Accordingly, the following legend is inscribed on circulating notes issued by the United States Treasury: "THIS NOTE IS LEGAL TENDER FOR ALL DEBTS, PUBLIC AND PRIVATE."

Unfortunately, I have become increasingly concerned about the rise in retail businesses refusing to accept cash, legal American currency, as a form of payment. This cashless trend will cause long-term harm to consumers and could lock millions of unbanked or underbanked Americans out of vast swaths of the economy.

According to the most recent data published by the Federal Reserve, 18 percent, nearly one in five, of all U.S. adults in 2020 were either unbanked, that is, entirely without any bank account, or underbanked, meaning those who had a bank account but also used "alternative financial services," such as payday lenders, sellers of money orders, or check-cashing services. It is these minority, low-income, undocumented or rural Americans, with little or no access to noncash forms of payment such as credit and debit cards and smartphone apps, who necessarily must rely on cash, and who can least afford the interchange fees and other costs that ordinarily must be paid on noncash purchases.

To secure the integrity of American currency, Rep. Chris Smith and I have introduced the bipartisan Payment Choice Act, H.R. 4395.

Our legislation would prohibit retail businesses from refusing cash payment and provide relief to consumers affected by this exclusionary practice. This bill would require businesses to give consumers the choice to pay with credit cards, debit cards, or cash, but it does not prohibit businesses from accepting credit or debit cards.

While the cashless trend has been accelerated by the COVID-19 pandemic, it is important to note that currency does not present any increased risk of COVID-19 transmission compared to credit cards. According to a 2013 study published in the Journal of Applied and Environmental Microbiology, American currency had an extremely low rate of virus transfer efficiency: between 0.05 percent and 0.2 percent. Nonporous surfaces, such as hard plastic countertops and credit card readers, had a transmission efficiency rate of up to 79.5 percent. This has been borne out by empirical evidence as well. In Germany, cash payments account for 80 percent of all transactions and the death rate for COVID-19 is nearly half that of the United States.

Every consumer should have the legal protection of payment choice. Businesses should not be able to deny consumers their basic civil liberty in their right to pay with cash. These protections not only ensure that underbanked or unbanked individuals have equal access to necessary goods and services, but they also allow all Americans to have a payment option that protects their privacy and offers them freedom from the increasingly pervasive data collection, identity theft, and fraud that has accompanied the rise of digital transactions. Cash has also proven to be a highly-reliable form of payment, ensuring financial transactions can always take place despite power outages or failures to the technological infrastructure that is necessary to conduct other methods of payment.

I am pleased that the Subcommittee has noticed the Payment Choice Act for this hearing, and I look forward to working with both of you, Chairwoman Waters and Ranking Member McHenry, as well as the rest of the Financial Services Committee to protect the right to pay in cash across the nation.